

## **Exhibit 2: Alexander Deposition**

(Although also referred to in Lucent's Third Supplement, the wrong pages were inadvertently included with that submission)

*IN THE MATTER OF:*

*Charles Sparks, et al.  
vs.  
AT&T Corporation, et al.*

*Cause No. 96-LM-983*

*Discovery Deposition of Barbara Alexander  
11/8/01*

*Gore Perry Gateway & Lipa Reporting  
515 Olive Street  
Suite 700  
St. Louis, MO 63101*

*Full GLOSSARY included with this DepoScript*



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[1] IN THE CIRCUIT COURT  
[2] THIRD JUDICIAL CIRCUIT OF ILLINOIS  
[3] MADISON COUNTY  
[4]  
[5] Charles Sparks And Margaret Little, Individually  
[6] And On Behalf Of All Others Similarly Situated,  
[7] Plaintiffs,  
[8]  
[9] vs. No. 96-LM-983  
[10]  
[11] AT&T CORPORATION,  
[12] Defendant,  
[13]  
[14] AND  
[15]  
[16] Charles Sparks And Margaret Little, Individually  
[17] And On Behalf Of All Others Similarly Situated,  
[18] Plaintiffs,  
[19]  
[20] vs. No. 01-L-1668  
[21]  
[22] LUCENT TECHNOLOGIES, INC.,  
[23] Defendant.  
[24]  
[25] Discovery dep of Barbara Alexander, 11/8/2001

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[23] LUCENT TECHNOLOGIES, INC.,  
[24] Defendant.  
[25]

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[1] IT IS STIPULATED AND AGREED by and  
[2] between counsel for Plaintiffs and counsel for  
[3] Defendants that the deposition of BARBARA ALEXANDER  
[4] may be taken for discovery purposes, pursuant to  
[5] and in accordance with the provisions of the  
[6] Illinois Civil Practice Act and Supreme Court Rules  
[7] pertaining to such depositions, by and on behalf of  
[8] the Defendants, on November 8, 2001, at Carr,  
[9] Korein, Tillery, Kunin, Montroy, Cates, Katz &  
[10] Glass, 701 Market Street, Suite 300, St. Louis,  
[11] Missouri, before Pamela Watson Harrison, RPR, CRR,  
[12] CSR (IL) #084-003684, CSR & CCR (MO), and Notary  
[13] Public; that the issuance of notice is waived and  
[14] that this deposition may be taken with the same  
[15] force and effect as if all statutory requirements  
[16] had been complied with.  
[17] IT IS FURTHER STIPULATED AND AGREED  
[18] that any and all objections to all or any part of  
[19] this deposition are hereby reserved and may be  
[20] raised on the trial of this cause, and that the  
[21] signature of the deponent is reserved.  
[22]  
[23]  
[24]  
[25]

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[1] APPEARANCES OF COUNSEL:  
[2]  
[3] FOR THE PLAINTIFFS:  
[4] MATTHEW H. ARMSTRONG, ESQ.  
[5] MICHAEL MARKER, ESQ.  
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[11] 314/241-4844  
[12]  
[13] FOR THE DEFENDANTS:  
[14] KETRINA BAKEWELL, ESQ.  
[15] LOUIS F. BONACORSI, ESQ.  
[16] Bryan Cave  
[17] One Metropolitan Square, Suite 3600  
[18] St. Louis, Missouri 63102  
[19] 314/259-2700  
[20] -----  
[21]  
[22]  
[23]  
[24]  
[25]



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[1] preliminaries.  
[2] A: Yes.  
[3] Q: You understand I'll be asking you questions  
[4] here today, and you are required to give complete,  
[5] truthful answers under oath?  
[6] A: Yes.  
[7] Q: Okay. And if at any time you need a break,  
[8] just yell out and we'll accommodate you.  
[9] A: Thank you.  
[10] Q: And also if I ask a question that you're  
[11] not clear about, you want me to rephrase it, to  
[12] repeat it, whatever needs to be done so that we're  
[13] on the same wavelength and you're answering what I  
[14] intend to be asking, you'll let me know, please.  
[15] A: Yes.  
[16] Q: Are you employed?  
[17] A: I am self-employed.  
[18] Q: How are you self-employed?  
[19] A: I am a consultant.  
[20] Q: Is there a name to your consulting  
[21] business?  
[22] A: It's not incorporated, but I use the title  
[23] Consumer Affairs Consultant.  
[24] Q: So that's the name that you use for your  
[25] own purposes. Is there a name to the business?

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[1] BARBARA ALEXANDER,  
[2] of lawful age, having been first duly sworn to  
[3] testify the truth, the whole truth, and nothing but  
[4] the truth in the case aforesaid, deposes and says  
[5] in reply to oral interrogatories propounded as  
[6] follows, to-wit:  
[7] EXAMINATION  
[8] QUESTIONS BY MS. BAKEWELL:  
[9] Q: Ms. Alexander, we introduced ourselves  
[10] before the deposition. My name is Ketrina  
[11] Bakewell. I represent the defendants in this  
[12] lawsuit, AT&T and Lucent Technologies. Could you  
[13] state your name for the record.  
[14] A: Barbara R. Alexander.  
[15] Q: And the R stands for?  
[16] A: Reid, R-E-I-D.  
[17] Q: Have you ever been deposed before today?  
[18] A: Yes.  
[19] Q: And I'm going to go through and ask you a  
[20] few questions about that later, but you're a lawyer  
[21] as well, correct?  
[22] A: I am indeed.  
[23] Q: So between those two things, I'm going to  
[24] assume you're pretty acquainted with the rules of a  
[25] deposition, but let me go through some

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[1] A: No.  
[2] Q: Are you the only person in that business?  
[3] A: Yes.  
[4] Q: You provided a resume or CV, and I'll go  
[5] ahead and have that marked.  
[6] (Defendants' Exhibit Alexander 1  
[7] marked for identification.)  
[8] Handing you what's been marked as Exhibit 1  
[9] to your deposition, if you can just tell me if you  
[10] recognize that.  
[11] A: Yes, I do.  
[12] Q: What is it?  
[13] A: This is my resume.  
[14] Q: Is it current?  
[15] A: I have probably done some additional  
[16] testimonies, filed some additional testimonies  
[17] since the time I provided this in the summer of  
[18] this year.  
[19] Q: So you provided the resume to Carr Korein  
[20] in the summer of this year?  
[21] A: Yes.  
[22] Q: What additional items would need to be  
[23] listed to make that current as of today?  
[24] A: Let's see. I provided testimony on behalf  
[25] of consumer organizations before the Canadian

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11 telephone regulators, on service quality regulation  
12 associated with price cap forms of regulation. I  
13 have done additional testimony in New Jersey on  
14 behalf of the public advocate there in a pending  
15 merger between two electric utilities, again, on  
16 service quality and consumer protection matters  
17 associated with the merger, proposing conditions if  
18 the merger is approved. I do not now recall any  
19 additional testimonies or publications since that  
20 time. This latest date is April of this year.

21 Q: All right. Could I please ask that either  
22 a supplement to the resume or an updated one be  
23 provided subsequent to your deposition?

24 A: Sure, no problem.

25 Q: I take it it would then provide specific  
26 identification of the additional testimony?

27 A: It would only add to the list of  
28 testimonies at the last page, yes.

29 Q: All right. You mentioned with the Canadian  
30 telephone organization for which you've given  
31 testimony that's not on your resume that that was  
32 on behalf of consumer organizations.

33 A: Yes. I believe the name of the  
34 organization is the Public Interest Advocacy Center  
35 in Ontario -- I'm sorry -- in -- What is the

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1 capital of Canada? Hall -- It's a city that has  
2 Hall on one side of the bridge and the capital of  
3 Canada on the other, and I'm not remembering it  
4 offhand. Anyway that's where they're located.

5 Q: You also mentioned recent testimony in New  
6 Jersey on behalf of, I believe, of the public  
7 advocate.

8 A: Yes. The Division of Ratepayer Advocate,  
9 the firm that's mentioned here already.

10 Q: What is that?

11 A: What is the Division of Ratepayer Advocate?

12 Q: Yes.

13 A: The Division of Ratepayer Advocate is a  
14 statutorily regulated body that is part of state  
15 government that is charged with representation of  
16 consumers, generally residential consumers, in  
17 proceedings before their Board of Public Utilities,  
18 which is their name for the local Public Utility  
19 Commission in New Jersey.

20 Q: Is the public advocate a part of the Board  
21 of Public Utilities?

22 A: No, they are not in New Jersey.

23 Q: They're an organization that can comment  
24 before the board?

25 A: That's right. They are part of a separate

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1 bureaucracy in state government. The overhead  
2 under which they report through their  
3 administrative structure I don't exactly know, but  
4 it's an independent office within state government  
5 that files comments and is by statute allowed to  
6 appear as a party before the board.

7 Q: So it would be able to file comments in the  
8 nature of any other parties that might appear  
9 before a Public Utility Commission in New Jersey?

10 A: That's correct.

11 Q: I understand that you are offered to  
12 testify here today as an expert witness on behalf  
13 of the plaintiff -- plaintiffs in this case; is  
14 that right?

15 A: Yes.

16 Q: What exactly is your expertise? How would  
17 you describe that?

18 A: I believe I did describe it in my report,  
19 as an attorney and consultant on consumer  
20 protection, service quality, low-income programs  
21 associated with the move to competitive energy and  
22 telephone markets; and then I described my prior  
23 history of working in the consumer protection  
24 field, not only with respect to public utility  
25 regulation but consumer credit and other aspects of

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1 credit transactions.

2 Q: And you're making reference to a particular  
3 paragraph in your expert report?

4 A: Yes. I'm making reference to paragraph 1  
5 under background and qualifications.

6 Q: Why don't we go ahead and mark that,  
7 although we're not going to go through it in detail  
8 just yet.

9 [Defendants' Exhibit Alexander 2

10 marked for identification.]

11 Showing you, Ms. Alexander, what's been  
12 marked as Exhibit 2, although I see the extra copy  
13 in front of you. Now you have two of them. You  
14 just referred to a paragraph 1 of this exhibit. Is  
15 that the paragraph you were referring to, to  
16 identify your expertise?

17 A: That is one of the paragraphs I was in the  
18 process of referring to, yes.

19 Q: All right. Let's go back, then. Exhibit  
20 2, just for the record, can you identify what that  
21 is?

22 A: Yes. This is the expert report that I  
23 prepared. It is dated October 23rd, 2001.

24 Q: And I asked you a moment ago to describe  
25 your expertise on which you are offered as an

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11 expert in this case, and you were beginning to  
12 refer to sections of your report. I believe you  
13 read from section -- or paragraph 1.

14 A: Yes.

15 Q: Would there be any other portions of the  
16 report that you would refer to as basis for your  
17 being offered as an expert witness here?

18 A: Well, I would point you to all the  
19 paragraphs under the title background and  
20 qualifications, which is paragraphs 1 and 2.

21 Q: Other than what is set forth in paragraphs  
22 1 and 2 of Exhibit 2, is there anything else that  
23 you would rely upon to hold yourself out as an  
24 expert in this case?

25 MR. MARKER: I think I'm going to object.  
The document speaks for itself. She's obviously  
relying on everything she's identified in the  
report.

A: I am not sure when you say relying upon to  
be an expert.

Q: Sure. Let me just go back and rephrase.

A: I have a resume that reflects a wide  
variety of experiences with regard to generally  
consumer protection matters. I believe that I was  
attempting to specify those particular aspects of

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11 my resume that were most relevant to the issues  
12 that have arisen in the context of this  
13 investigation and the combination of my resume. My  
14 experiences in these two paragraphs, I think, would  
15 be the proper way to describe my areas of  
16 expertise.

17 Q: Okay. The Exhibit No. 2, is that a  
18 complete statement of your opinions on which you're  
19 expecting to testify in this case?

20 A: Yes, in the sense that it is complete as of  
21 October 23rd. If it turns out that there is need  
22 to supplement it later, that would be done in the  
23 normal course, however procedurally that occurs.  
24 As I believe you know, the volume of material  
25 involved in the deposition -- or the discovery in  
this case has been significant, and there is  
ongoing research being done with respect to those  
documents. If there are any additional, they would  
be provided formally.

Q: Okay. And you say ongoing research. What  
research are you referring to?

A: The research that this firm has conducted  
with respect to just examining the materials that  
are in the hundred plus boxes as I understand that  
have been produced as discovery. In particular I

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11 know that further work is being done to attempt to  
12 look at the consumer complaint material that's been  
13 located in these boxes, to organize it and  
14 categorize it in a way that would make it  
15 analytically useful to me and, therefore,  
16 potentially as additional material in this case.

17 Q: And when you say those consumer complaint  
18 documents are being organized and categorized, are  
19 you doing that or someone at your direction?

20 A: I'm not personally doing it. I have  
21 discussed the methodology of categorizing them with  
22 paralegals in this law firm, yes.

23 Q: What discussion or direction are you giving  
24 them?

25 A: I don't have a piece of paper that I have  
or even had, but at the time there were discussions  
with respect to trying to determine the date of the  
complaint, the basic underlying consumer  
allegation, whether it had to do with a billing  
error or every payor matter, whether it was an  
allegation that the customer didn't understand why  
they were paying for this phone, or they returned  
it years ago, this so-called allegation, I didn't  
know I was leasing kinds of complaint, and to  
perhaps even indicate the state of the residents of

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11 the complainant.

12 Q: The directions you're describing, were  
13 those presented in any written form?

14 A: Not by me, in the sense that there may have  
15 been notes taken, but I do not have them and I  
16 didn't provide them in written form.

17 Q: Have you seen any notes that would reflect  
18 the organization that's being done after discussion  
19 with you of consumer complaints?

20 A: No, I haven't actually.

21 Q: Other than that ongoing research, anything  
22 else that you have reference to when you refer to  
23 ongoing research?

24 A: Not in a structured sense. To the extent  
25 that further work at locating materials in boxes  
occurs, they may be submitted to me or others.

Q: So if any particular documents are  
identified that you haven't already seen --

A: Right.

Q: -- those might be sent to you?

A: That's correct.

Q: Is there any particular material that  
you've asked to be provided or asked to see other  
than what's already been made available to you and  
these customer complaints that you've referred to?



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[1] A: No.  
[2] Q: Other than supplement or additional  
[3] opinions that might be generated from these kind of  
[4] materials, do you anticipate doing any further work  
[5] to develop opinions in the case?  
[6] A: No.  
[7] Q: When did you first get involved in this  
[8] matter?  
[9] A: Late May or early June of this year.  
[10] Q: Were you acquainted with anyone working on  
[11] the case, including but not limited to the Carr  
[12] Korein firm?  
[13] A: No, not prior to the contact to me.  
[14] Q: And how did that contact occur?  
[15] A: Matt Armstrong, Matthew Armstrong, called  
[16] me and introduced himself and explained who he was  
[17] with and what he was doing and indicated that he  
[18] would like to pursue discussions with me to  
[19] determine whether I would be interested in  
[20] participating, under what conditions, and could I  
[21] provide him with additional information on my  
[22] background, to determine if they in fact thought  
[23] that that was the appropriate kind of expert that  
[24] they needed for this proceeding.  
[25] Q: Were you told anything about what kind of

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[1] to obtain?  
[2] A: Not substantively. I asked questions about  
[3] what process this case was in, you know, what kind  
[4] of product would be expected of me if I became an  
[5] expert and so on, but no, no substantive  
[6] discussion.  
[7] Q: Did you ask to see any particular  
[8] materials?  
[9] A: At that point? I was told there were  
[10] voluminous materials, and I believe -- I'm almost  
[11] sure that I asked to see something to do with the  
[12] formal complaint, you know, what is the complaint  
[13] in this case, where is it in the court system; and  
[14] I believe that I was sent the complaint information  
[15] at that point.  
[16] Q: So you asked to see the complaint?  
[17] A: Yes.  
[18] Q: And you were provided that?  
[19] A: Yes.  
[20] Q: Were you provided anything else after this  
[21] initial call with Mr. Armstrong?  
[22] A: Not prior to the formal engagement, no, not  
[23] in the initial exchange of information.  
[24] Q: Other than what you've described, was there  
[25] anything else that Mr. Armstrong told you in that

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[1] an expert they were looking for?  
[2] A: Certainly the words consumer protection  
[3] expertise, knowledge of consumer disclosures,  
[4] knowledge of New Jersey situation. Beyond that,  
[5] no. Generalities.  
[6] Q: When you say New Jersey situation, what do  
[7] you mean?  
[8] A: I believe he actually located me because  
[9] the Division of Ratepayer Advocate in New Jersey  
[10] has a lot of my testimony on their website, and  
[11] most of that testimony prominently discusses  
[12] consumer protection issues and matters. So I  
[13] believe that caught his eye.  
[14] Q: What makes you believe that? Is that what  
[15] he told you?  
[16] A: That is my recollection, yes, that he told  
[17] me that.  
[18] Q: Do you remember anything else that you were  
[19] told in this initial contact about the case?  
[20] A: No.  
[21] Q: Other than recalling they were looking for  
[22] a consumer protection expert with the -- on the  
[23] matters that you've described, were you told  
[24] anything else about the areas of expertise or the  
[25] types of opinions that the plaintiffs were looking

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[1] initial conversation about the case?  
[2] A: Not that I recall, no.  
[3] Q: Did he tell you anything about the claims  
[4] in the case?  
[5] A: Well, I was informed that it was either  
[6] currently or about to be a national class action,  
[7] which obviously suggests that damages would be  
[8] obtained. But there was no discussion of -- other  
[9] than the obvious procedural aspects of what class  
[10] actions are about.  
[11] Q: Other than discussing its posture as a  
[12] class action --  
[13] A: Right.  
[14] Q: -- was there any discussion about the  
[15] allegations or telephone sets in that conversation?  
[16] A: Not other than telling me what was in the  
[17] complaint document that had been filed.  
[18] Q: So you-all talked about what was the nature  
[19] of the complaint that was filed by the plaintiff?  
[20] A: Right.  
[21] Q: Were you told anything about the defenses  
[22] being raised in the case?  
[23] A: Not that I recall, no.  
[24] Q: Did you ask?  
[25] A: I'm reconstructing a very casual phone

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[1] conversation. I have no specific recollection at  
[2] that point in the process.  
[3] Q: How long would you say you talked with  
[4] Mr. Armstrong in that initial contact?  
[5] A: Ten or 15 minutes.  
[6] Q: What happened next in terms of  
[7] communications between you and Carr Korein?  
[8] A: I provided my resume. I provided a  
[9] proposal in terms of remuneration, and I got the  
[10] formal filings in the mail, I believe. I believe I  
[11] got the filings and then prepared the proposal.  
[12] And at that point it was a matter of formalizing  
[13] the engagement, which was done shortly thereafter.  
[14] Q: So the sequence, you talked with  
[15] Mr. Armstrong?  
[16] A: Uh-huh.  
[17] Q: You sent your resume?  
[18] A: Uh-huh.  
[19] Q: You then received some materials from --  
[20] A: Right.  
[21] Q: -- from Mr. Armstrong's office?  
[22] A: Right.  
[23] Q: And after that you made a proposal?  
[24] A: Right. I wrote a letter.  
[25] Q: Has that letter been provided in this case;

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[1] do you know?  
[2] A: I do not know.  
[3] Q: Who did you write the letter to?  
[4] A: Matthew Armstrong.  
[5] Q: Was it a letter, an e-mail?  
[6] A: I may have sent it both ways.  
[7] Q: When you say proposal, describe for me what  
[8] that was exactly.  
[9] A: A letter that described my areas of  
[10] expertise, my proposal to examine the materials, to  
[11] do an expert report, provide myself available for  
[12] further discovery, cross-examine, depositions,  
[13] whatever is needed in the case, stated an hourly  
[14] rate, sought an advance, and asked of -- if there's  
[15] any further questions, please contact me.  
[16] Q: Did you state what your fee was going to be  
[17] in the proposal?  
[18] A: Yes, I did.  
[19] Q: And as long as we're at that point, let me  
[20] just ask you what your fee is. Is it hourly or  
[21] some other basis?  
[22] A: Is this proper -- I'm getting a nod from my  
[23] attorney. Yes. It's an hourly basis. It's \$190  
[24] an hour and a bit more -- I believe it's 220 for  
[25] cross-exam or appearances of this kind.

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[1] Q: So appearance at a deposition?  
[2] A: Right.  
[3] Q: What about appearance at trial?  
[4] A: At trial, yes, right.  
[5] Q: I want to go back for a moment to the  
[6] documents that you received after you provided your  
[7] resume. You said that you received filings.  
[8] A: The court filings, yes.  
[9] Q: What specifically were you provided at that  
[10] point?  
[11] A: I'm sorry. I don't remember the details.  
[12] Q: Do you still have those documents in your  
[13] possession?  
[14] A: Oh, I'm sure that I do, yes.  
[15] Q: Did they come with some sort of cover  
[16] letter from Mr. Armstrong's office?  
[17] A: Probably.  
[18] Q: Do you remember that?  
[19] A: I'm sorry. I don't. But most documents  
[20] that have been sent to me have come from his office  
[21] with a cover office, enclosed find blank, sincerely  
[22] blank. So I am also presuming that those documents  
[23] came that way.  
[24] Q: Now, the documents that you received, I  
[25] guess, in this initial package --

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[1] A: Yes.  
[2] Q: -- what you called the court filings, do  
[3] you have those organized or separated, put together  
[4] in some fashion in your files that you could put  
[5] your hands on them and say here's what I received?  
[6] A: I'm not sure, because as the case took  
[7] other procedural filings and motions that occurred  
[8] during the summer, that little piece of my file  
[9] increased. But certainly insofar as we're talking  
[10] about all the original filings, those are, I'm  
[11] sure, easily identifiable, yes.  
[12] Q: But do you have a separate section in your  
[13] file for filings or pleadings in the case that  
[14] you've been provided?  
[15] A: I have a pile in my office that can be  
[16] easily identified that would consist of those  
[17] documents, yes.  
[18] Q: And is it your recollection that with each  
[19] group of those that would be sent to you, there  
[20] would be some sort of a cover letter or a cover  
[21] note from Mr. Armstrong's office?  
[22] A: Yes.  
[23] Q: Have those been -- I'm sorry.  
[24] A: I want to say that I'm not sure I retained  
[25] those cover letters. They weren't of any

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[1] substantive nature at all.  
[2] Q: What would you have done with them?  
[3] A: Tossed them.  
[4] Q: Did those cover letters, to the best of  
[5] your recollection, list what was being provided on  
[6] a particular date?  
[7] A: At this point, it probably -- I do not  
[8] remember, at this point in the process.  
[9] Q: In preparation for your testimony, did you  
[10] provide to Carr Korein all of the materials that  
[11] you had in your file?  
[12] A: Yes.  
[13] Q: Including --  
[14] A: In preparation for this deposition, yes, I  
[15] did.  
[16] Q: And did that include these, I guess,  
[17] materials from the filings or pleadings in the  
[18] case?  
[19] A: No.  
[20] Q: Those were not provided?  
[21] A: No.  
[22] Q: Do you know if those have been identified  
[23] in terms of disclosures for your deposition here  
[24] today?  
[25] A: I have no idea.

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[1] Q: Let me ask a question just to clarify on  
[2] the proposal that you made to Carr Korein. Was  
[3] that a proposal to examine materials and decide if  
[4] you could provide opinions that would be helpful,  
[5] or was it a proposal for actual engagement as an  
[6] expert in the case?  
[7] A: The latter.  
[8] Q: So if I understand you, after reviewing  
[9] filings in the case -- Well, let me back up. Did  
[10] you review anything other than filings or pleadings  
[11] in the case before making the determination that  
[12] you would provide opinions and sending your  
[13] proposal?  
[14] A: Well, I made a proposal to examine  
[15] materials and provide an opinion based on that  
[16] examination. I had not yet conducted any  
[17] examination of substantive underlying materials at  
[18] the time the letter was written, no.  
[19] Q: Had you reached any conclusions or opinions  
[20] at the time you made your proposal?  
[21] A: Not at all.  
[22] Q: Was the proposal that you made provided as  
[23] part of turning over your files to Carr Korein in  
[24] this case?  
[25] A: I do not know.

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[1] MR. MARKER: I don't think she was through  
[2] with her question.  
[3] Q: Let me just go back. Was the proposal that  
[4] you made to Carr Korein part of the files that you  
[5] provided to be turned over in preparation for your  
[6] deposition?  
[7] A: I do not know.  
[8] Q: Do you -- I'm sorry.  
[9] A: I did not provide it.  
[10] Q: You did not provide it to Carr Korein?  
[11] A: Of course I provided the letter to Carr  
[12] Korein. I do not know if it was included in the  
[13] materials provided to you.  
[14] Q: I understand.  
[15] A: Yeah.  
[16] Q: Do you still have a copy of it?  
[17] A: I'm sure that I do, yes.  
[18] Q: Okay. And I would ask that a copy of that  
[19] be provided as well. It has not been.  
[20] MR. MARKER: I don't know if it has or not.  
[21] But if it hasn't, we will.  
[22] Q: So we've gotten up to the point where you  
[23] provided a proposal to Carr Korein. What happened  
[24] next in terms of your involvement in the case?  
[25] A: The documents started arriving. Actually

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[1] the boxes started arriving.  
[2] Q: And let me go back and establish time  
[3] periods again. I believe you said that you were  
[4] first contacted early summer of this year.  
[5] A: Yes.  
[6] Q: Do you have a specific date that you  
[7] recall?  
[8] A: Offhand I don't. But the date of the  
[9] letter would confirm that time period. I just  
[10] don't remember it offhand.  
[11] Q: And you're talking about the date of  
[12] Mr. Armstrong's letter to you?  
[13] A: No. The date of my proposal.  
[14] Q: Date of your proposal?  
[15] A: Right.  
[16] Q: And after your proposal you began receiving  
[17] documents?  
[18] A: Yes.  
[19] Q: How was it determined what documents you  
[20] would be provided?  
[21] A: It was explained to me by Matt that he had  
[22] conducted many depositions by that point and had  
[23] been working on this case for at least years, I  
[24] recall. And that in the course of preparing for  
[25] those depositions, he and his paralegal staff had

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[1] identified many documents and already had them  
[2] introduced or used in the context of depositions.  
[3] So as a preliminary matter, I was sent copies of  
[4] depositions, exhibits, and other documents that had  
[5] been located in the files relating to AT&T's  
[6] interactions with its customers, disclosures,  
[7] internal marketing plans, and various other  
[8] documents that they had already found in these  
[9] boxes and that that was the preliminary set of  
[10] boxes that I received.

[11] Q: Help me understand. I'm trying to  
[12] determine whether Carr Korein sent you things that  
[13] they had determined were appropriate for you to see  
[14] or whether at that point you requested particular  
[15] items.

[16] A: At that point, without knowing the universe  
[17] of possibilities and the volume that I was told,  
[18] the hundred boxes in the warehouse description, I  
[19] relied on them in the beginning to select the  
[20] documents that would be of an educational  
[21] background to me and that they had determined were  
[22] of interest from their perspective in the early  
[23] year of the depositions and the analysis of these  
[24] materials.

[25] Q: So --

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[1] A: But that was only the early part of the  
[2] process.

[3] Q: The first group or groups of documents are  
[4] what Carr Korein thought were appropriate for you  
[5] to see?

[6] A: Yes.

[7] Q: And later you asked for particular items?

[8] A: Yes.

[9] Q: Let me go back for a second to the filings  
[10] you received as the initial matter. You said the  
[11] first group of documents you received after you  
[12] sent your resume to Mr. Armstrong were court  
[13] filings or pleadings.

[14] A: Yes.

[15] Q: Do you recall any filings or pleadings that  
[16] Defendants had made that you were provided with?

[17] A: I'm sorry. I just do not recall.

[18] Q: And if we wanted to know what specific  
[19] documents you received at that point before you  
[20] made your proposal, we'd need to go back and look  
[21] at your records on pleadings and the letters from  
[22] Mr. Armstrong?

[23] A: Yes.

[24] Q: How many documents did you receive in the  
[25] first wave, or how many boxes, since you said

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[1] boxes?

[2] A: I believe there were at least four or five  
[3] boxes of materials.

[4] Q: Were there subsequent deliveries or  
[5] shipments?

[6] A: Yes.

[7] Q: And was there any particular organization  
[8] to the groupings of documents that you received?  
[9] In other words, you received a first installment of  
[10] about four to five boxes. Generally what did those  
[11] contain, or was there a general description?

[12] A: Well, I believe I did describe them. They  
[13] were depositions, transcripts of depositions, and  
[14] exhibits attached to those depositions or used in  
[15] preparation for those depositions. Two of the  
[16] boxes were bill inserts that were in the form that  
[17] that law firm had received them from AT&T.

[18] Q: Produced in the case, you mean?

[19] A: That's correct, as discovery items. And so  
[20] that would be the general description that the  
[21] first four or five boxes were.

[22] Q: How many boxes have you received total,  
[23] boxes of documents total from Carr Korein, in your  
[24] preparation to testify in this case?

[25] A: At least 15.

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[1] Q: When you say at least 15, it might be more?

[2] A: Yes, it might be more.

[3] Q: How would you determine exactly how many  
[4] boxes of documents you've received?

[5] A: How would I determine?

[6] Q: Uh-huh. Would you go back and count? How  
[7] are they organized that would allow you to  
[8] determine that?

[9] A: Oh, the reason why there's any hesitation  
[10] on the exact number is that at some point during  
[11] the summer, I reorganized the materials in these  
[12] boxes and shipped back them at least three or four,  
[13] maybe five boxes of materials that were either  
[14] duplicative of materials that had arrived at an  
[15] earlier time or that were a lot of spreadsheet  
[16] pricing analysis and materials that were not  
[17] germane to my subject matter. And so just to  
[18] provide some sanity to my work space, I decided to  
[19] work with a smaller group that were obviously from  
[20] my perspective related to the area that I was  
[21] looking at and rid myself of the extra paper that  
[22] had occurred when I sorted through all of the raw  
[23] materials that had arrived.

[24] Q: When you returned those documents, the  
[25] duplicates and the other things that you didn't



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[1] believe were germane, when you returned those to  
[2] Carr Korein, did you send cover letters with those  
[3] that would document what documents came back?  
[4] A: No, I did not. I said, here are -- You  
[5] know, I called and said they're coming. You know,  
[6] they were all FedExed.  
[7] Q: And put them in a box and sent them?  
[8] A: Yes, that's right.  
[9] Q: Would your FedEx records show how many  
[10] boxes were returned?  
[11] A: Yes, probably would.  
[12] Q: How many, would you say?  
[13] A: I did say.  
[14] Q: I'm sorry. Well, then, could you repeat  
[15] what that number was for me?  
[16] A: Can you go back and tell her how many  
[17] boxes? She asked me earlier that question.  
[18] Q: You know, I'm sorry if I didn't write down  
[19] the number. I'm just trying to determine how many  
[20] boxes you sent back, and if you said that before, I  
[21] apologize. Do you remember?  
[22] A: I think I said three, four, or five.  
[23] something like that, that were sent back.  
[24] Q: That's fine.  
[25] A: Yes.

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[1] Q: I'm just trying to get a point of reference  
[2] here. The boxes that you retained then, if you  
[3] originally received 15 or more, how many did that  
[4] leave you approximately in your own records?  
[5] A: Ten.  
[6] Q: We've been provided with four boxes of  
[7] materials, and I'll just represent to you that we  
[8] were advised those are documents that you culled  
[9] down from and were your files after having gone  
[10] through materials from Carr Korein. Without asking  
[11] you to accept that or not, that's just -- I'm  
[12] representing what we were told. I'm trying to  
[13] understand if you did have some sort of culled-down  
[14] file and what that consists of currently.  
[15] A: I described it. There were nine or ten  
[16] boxes of materials that I described in my footnote  
[17] of my report that I worked with.  
[18] Q: So you currently -- your current working  
[19] file is nine or ten boxes?  
[20] A: That's correct.  
[21] Q: Okay. In preparation for the deposition,  
[22] did you make available to Carr Korein your working  
[23] file to copy?  
[24] A: Yes.  
[25] Q: When did that happen?

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[1] A: Several weeks ago.  
[2] Q: And were nine to ten boxes copied at that  
[3] point?  
[4] A: I shipped the boxes here.  
[5] Q: Did you ship to Carr Korein at that point  
[6] all of your records in the case?  
[7] A: Yes, I did.  
[8] Q: Was there anything that you didn't include  
[9] that is in your file in this case?  
[10] A: I think we identified the plaintiffs'  
[11] pleadings and potentially the defendants' answers  
[12] to those pleadings as documents that I did not send  
[13] back to St. Louis.  
[14] Q: And when you say potentially defendants'  
[15] answer, if I recall your testimony, you didn't  
[16] recall if that was included or not?  
[17] A: That's why I used the word potentially.  
[18] Q: But you don't recall?  
[19] A: I don't recall, no, I do not.  
[20] Q: Other than the pleadings and your proposal,  
[21] the documents -- or the cover letters that you  
[22] mentioned from Mr. Armstrong that you might not  
[23] have retained, anything else that is in your file  
[24] that was not returned for copying?  
[25] A: Not to my knowledge, no.

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[1] Q: What about computer records; do you have  
[2] e-mail related to the case?  
[3] A: I printed those out and included them.  
[4] Q: So you printed out and included e-mail that  
[5] was turned over with these documents, returned to  
[6] Carr Korein?  
[7] A: Yes, I did.  
[8] Q: Were there any e-mails either between you  
[9] and Carr Korein or between any other witnesses in  
[10] this case that were not included?  
[11] A: No.  
[12] Q: Have you been on e-mail communication basis  
[13] with Charlotte TerKeurst in this case?  
[14] A: We have communicated by e-mail, yes.  
[15] Q: Did you print those out and provide them?  
[16] A: Yes, I did.  
[17] Q: With any of the other witnesses in the  
[18] case?  
[19] A: No.  
[20] Q: Other than e-mail, have you created any  
[21] documents on, you know, a Word system,  
[22] spreadsheets, anything like that, in the case?  
[23] A: Those that I created were provided.  
[24] Q: And so the things I'm aware of, I'll just  
[25] kind of go down the checklist. We've identified



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11| your resume, although I -- I'm assuming that wasn't  
12| created -- correct me if I'm wrong -- especially  
13| for this case?

14| A: That's correct.

15| Q: The one that was initially provided. Your  
16| report that we marked Exhibit 2?

17| A: Uh-huh, yes.

18| Q: There was also a spreadsheet of certain  
19| documents?

110| A: Yes.

111| Q: And we'll look at that in a few minutes.

112| Any other documents that you created on your  
113| computer related to this case?

114| A: Whatever I had created on the computer in  
115| the form of e-mails or other materials that had  
116| been created in the context of this case were all  
117| provided in the file that went back to Carr Korein  
118| in response to the request for deposition in this  
119| case.

120| Q: Other than the ones we just listed, can you  
121| identify any particular ones?

122| A: Oh, ones that I know are included, there's  
123| a couple e-mail records. There's some handwritten  
124| notes of a meeting.

125| Q: Just let me go back. I might have confused

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11| you with my question.

12| A: I'm sorry.

13| Q: I don't want to do that. I'm trying to  
14| focus on any computer records first.

15| A: Oh, all right.

16| Q: You said that anything you had was printed  
17| out and provided to Carr Korein.

18| A: Right.

19| Q: I'm trying to identify what specifically  
110| those were, other than the three things that we  
111| already mentioned, your report, your resume, and  
112| the spreadsheet of documents.

113| A: And we've talked about e-mails.

114| Q: E-mails, yes.

115| A: Those are computer records, so that's why I  
116| started out with that answer. There were  
117| attachments to those e-mails that were printed out  
118| and provided, a time line of the case, an outline  
119| of the deposition -- not the deposition -- yes, a  
120| summary of the depositions, and an outline,  
121| one-page outline, of the key ways of which the  
122| materials in this case could be organized. All of  
123| that was provided.

124| Q: Anything else you remember?

125| A: No.

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11| Q: After you provided -- or after you received  
12| the various documents -- Jumping back. You  
13| described receiving documents in installments from  
14| Carr Korein, first a group of depositions and  
15| exhibits, additional items. Did you at some point  
16| request specific items, specific documents to be  
17| sent to you?

18| A: At many times I would do that, yes.

19| Q: What specifically did you request, if you  
110| could describe the categories?

111| A: I'm sure that I will not remember offhand  
112| all of the different communications that went back  
113| and forth during the summer concerning whether or  
114| not certain materials could be made available, but  
115| I will give you a couple of examples of things that  
116| readily come to my mind.

117| I recall wanting them to search through the  
118| materials to locate the form in which the  
119| disclosure occurred to tell customers that their  
120| right to purchase had expired at the end of the  
121| transition period in early '86. I recall asking  
122| for more information about the company's premise  
123| visit policy for repairs and modular conversions.  
124| I recall asking for more information about  
125| hard-wired customers, party line customers.

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11| Those would be examples of things that I do  
12| specifically recall now.

13| Q: As you sit here today, can you remember any  
14| other specific items of documents that you asked to  
15| see?

16| A: Well, I definitely asked for anything they  
17| could find in their files with respect to the  
18| advertising, communications with customers, bill  
19| inserts, TV, newspaper print advertising that  
110| occurred in the '84, '85, and '86 time period. Any  
111| and all information that could be located about  
112| that time period was of particular interest and  
113| concern to me.

114| Q: Anything else?

115| A: I recall asking at one point for more  
116| information about -- I'm trying to recall how I  
117| phrased the words. Having to do with  
118| sets-in-service charts, the volume of the business.

119| Q: You were looking for information on number  
120| of telephones --

121| A: Right.

122| Q: -- being used?

123| A: Right.

124| Q: Why did that make a difference to you? Why  
125| did you want to see that?

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[1] A: When you come into this case, as I did from  
[2] the outside looking in, there is a desire for a  
[3] structure within which to understand the detailed  
[4] daily documents that you're looking at. And in  
[5] that particular case, I certainly wanted to know,  
[6] you know, how many embedded-base phones, you know, [6]  
[7] residential customers, how that changed over time  
[8] and so forth.

[9] Q: To give yourself some context?

[10] A: Yes.

[11] Q: Before being contacted by Mr. Armstrong,  
[12] had you ever worked on any issues in your  
[13] consulting business or in any of your past  
[14] employment experience related to telephone  
[15] equipment issues?

[16] A: I think the answer to that is no; although,  
[17] when I was on the staff at the Maine Public  
[18] Utilities Commission beginning in the spring of  
[19] '86, those issues were certainly part of my  
[20] responsibility to sort of know about in terms of --  
[21] of the -- the customer rights with respect to  
[22] purchasing telephones and what jurisdiction the  
[23] Maine commission, which turned out to be nothing,  
[24] had in this area and so forth, as a result of  
[25] responding to customer calls and inquiries and

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[1] complaints that would come into the commission in  
[2] the normal course.

[3] Q: You started off the answer by saying I  
[4] think the answer is no, but I had this involvement  
[5] with the Maine commission.

[6] A: Right.

[7] Q: While you were with the Maine commission --  
[8] That was from 1986 through 1996?

[9] A: That's correct.

[10] Q: -- did you personally get involved in any  
[11] communications with customers, any appearances  
[12] before the commission, any comments that might have  
[13] been filed by the commission?

[14] A: On?

[15] Q: I'm sorry. Related to telephone equipment  
[16] issues.

[17] A: Not to my recollection.

[18] Q: And I guess that would include anything  
[19] related to telephone equipment leasing issues?

[20] A: That's correct.

[21] Q: When you say that would have been part of  
[22] your responsibilities with the Maine commission,  
[23] can you tell me what you mean by that?

[24] A: Responsibilities in the sense of  
[25] understanding divestiture, the breakup of AT&T, the

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[1] situation with respect to the entities over which  
[2] the Maine commission had jurisdiction, which would  
[3] be the local RBOCs and local phone service, and the  
[4] entities who were subject to the jurisdiction of  
[5] the Federal Communications Commission, or which  
[6] were, quote, deregulated, unquote; and in this case  
[7] that would include telephone equipment. Outside of  
[8] that need to know the general lay of the land,  
[9] there were no specific issues that ever came to my  
[10] attention that involved the Maine's PUC's  
[11] investigation of or analysis of telephone sets or  
[12] leasing matters.

[13] Q: So I take it that if the Maine commission  
[14] filed any comments with the Federal Communications  
[15] Commission or filed any papers with regard to the  
[16] divestiture order, you wouldn't have been involved  
[17] with that?

[18] A: Well, that happened before I was hired in  
[19] any case.

[20] Q: So --

[21] A: All that happened in '83, '84, and perhaps  
[22] '85, but certainly had all been completed by the  
[23] time I was hired in '86.

[24] Q: So the answer would be no?

[25] A: That's correct.

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[1] Q: After you came on board with the Maine  
[2] commission --

[3] A: Yes.

[4] Q: -- in 1986, did you ever get involved in  
[5] any kind of comments or filings in that commission  
[6] with regard to telephone equipment leasing issues?

[7] A: No.

[8] Q: And just so I'm making sure I'm exhaustive  
[9] here, other than the kind of general overview  
[10] involvement that you've described with the Maine  
[11] commission, until you got the call from  
[12] Mr. Armstrong, did you have any knowledge about  
[13] telephone equipment leasing?

[14] A: No.

[15] Q: What about with regard to the provision of  
[16] telephone equipment generally in the marketplace?

[17] A: As a consumer, or as a professional  
[18] consultant?

[19] Q: Good question. Either in your role as a  
[20] consultant or in any of your roles with public  
[21] advocacy groups or any sort of public agency. Did  
[22] you have any involvement with telephone equipment  
[23] issues before getting your call from Mr. Armstrong?

[24] A: No.

[25] Q: And so I'll ask you the next question.

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[1] What about as a consumer; have you ever leased a  
[2] phone?  
[3] A: I must have, because I had my own apartment  
[4] after I graduated from college, but I have no  
[5] personal recollection of how I owned or had  
[6] telephones, to be quite honest with you. So I  
[7] don't know.  
[8] Q: And to help me -- I'm sure you remember --  
[9] I'm looking back at Exhibit 1 which is your resume.  
[10] A: Yes.  
[11] Q: You said when you got out of college and  
[12] got an apartment. You graduated from University of  
[13] Michigan in 1968?  
[14] A: Yes.  
[15] Q: Is that the point you're talking about, or  
[16] would it be when you graduated from law school?  
[17] A: It would be after college.  
[18] Q: Circa 1968?  
[19] A: 1968, '69, yes.  
[20] Q: At the time of divestiture, do you know  
[21] what date that was?  
[22] A: As I understand it from my recollection  
[23] from these materials, that occurred in 1984.  
[24] Q: Okay. Do you know what month?  
[25] A: I believe the month is typically referred

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[1] to as January of '84, right.  
[2] Q: What telephones did you have in January of  
[3] 1984?  
[4] A: At that point my husband and I had an  
[5] apartment in Maine, and because we had just  
[6] recently moved to the state, my presumption is that  
[7] we bought telephones at that point, because we were  
[8] moving into a new -- newly constructed apartment.  
[9] I have absolutely no recollection of ever leasing a  
[10] telephone.  
[11] Q: And your recollection would be in 1984 that  
[12] you were not leasing a phone?  
[13] A: That's correct.  
[14] Q: Do you recall ever turning a phone back  
[15] in --  
[16] A: No.  
[17] Q: -- to a local telephone company?  
[18] A: I do not.  
[19] Q: And did you just move to Maine in 1984?  
[20] A: '83.  
[21] Q: 1983?  
[22] A: That's right.  
[23] Q: Where did you live before that?  
[24] A: Washington, D.C.  
[25] Q: Who was the local telephone provider there?

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[1] A: I couldn't tell you. When you say there,  
[2] do you mean Washington, D.C.?  
[3] Q: I'm sorry. Washington, D.C.  
[4] A: C & P, Chesapeake & Potomac, is ringing a  
[5] bell with me, but beyond that I'm sorry.  
[6] Q: Okay. What telephones do you currently  
[7] have in your home?  
[8] A: Lots.  
[9] Q: Okay.  
[10] A: We've bought them all. I couldn't even  
[11] tell you the brands.  
[12] Q: Is it a variety?  
[13] A: Yes, it is a variety.  
[14] Q: You say lots. Can you give me some order  
[15] of magnitude?  
[16] A: Oh, I'm sorry. Let me count.  
[17] Q: Sure.  
[18] A: Seven.  
[19] Q: That is a lot.  
[20] A: Sorry.  
[21] Q: And what's the most expensive one that you  
[22] bought? What did you pay for it?  
[23] A: Eighty, ninety dollars. That would be for  
[24] a two-line -- what do you call it -- a wireless  
[25] handset system.

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[1] Q: What about the least expensive one did you  
[2] pay; do you know?  
[3] A: Twenty dollars.  
[4] Q: Do you remember what you paid for any of  
[5] the phones that you believe you bought in 1984?  
[6] A: No.  
[7] Q: Do you know where you went to buy them?  
[8] A: No.  
[9] Q: How did you know that you could buy a  
[10] phone?  
[11] A: I believe it was we had to buy a phone,  
[12] because when we moved in, there was none there.  
[13] Q: And how did you know that you could go  
[14] somewhere and buy a phone?  
[15] A: I do not recall how we knew that we could  
[16] go to a store and buy a phone.  
[17] Q: You said you didn't recall where you bought  
[18] your phone or phones. Was it multiple phones in  
[19] 1984, or did you just get one?  
[20] A: Probably were two phones.  
[21] Q: Okay. Do you know if it was at an AT&T  
[22] phone center store or some other telephone company  
[23] store?  
[24] A: I'm sorry. I do not remember.  
[25] Q: Have you ever bought a phone at K-Mart,

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[1] Target, Wal-Mart --  
[2] A: Sure.  
[3] Q: -- discount store like that?  
[4] A: Yes.  
[5] Q: Where have you gone to get that?  
[6] A: In recent years, or are you speaking now  
[7] about 1984?  
[8] Q: Well, let's say recent years.  
[9] A: In recent years I have bought a phone at  
[10] Sears, at Best Buy, at Staples. That would be  
[11] examples.  
[12] Q: All right. Since you mentioned earlier  
[13] years, where's the first place that you remember  
[14] buying a phone after 1984?  
[15] A: I'm sorry. I just don't. I don't  
[16] remember.  
[17] Q: You can't remember the first place you ever  
[18] bought a phone?  
[19] A: No.  
[20] Q: When you bought your phones in 1984 when  
[21] you moved -- or 1983 --  
[22] A: Yes.  
[23] Q: -- did you buy them before or after  
[24] divestiture?  
[25] A: I'm sorry. I don't remember.

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[1] Q: Did you buy your first phones in Maine when  
[2] you moved into the apartment?  
[3] A: That is my assumption, but I do not  
[4] specifically recall buying the phones. So I cannot  
[5] confirm that to you.  
[6] Q: So you can't give me a point in time?  
[7] A: I'm sorry. I cannot.  
[8] Q: Okay. That's fine. I want to just go back  
[9] and wrap up an area about documents that you might  
[10] have seen in the case. Were you provided or did  
[11] you obtain, review any FCC or other regulatory  
[12] orders or filings?  
[13] A: Yes.  
[14] Q: What did you review?  
[15] A: These were all documents that I believe  
[16] were from AT&T's files on the FCC order, the AT&T  
[17] response or reports or filings on that order. This  
[18] was the order that was issued in late '83, 1983.  
[19] Q: Talking about FCC order?  
[20] A: Orders, yes. I do not know if the  
[21] actual -- Well, I believe the FCC order was  
[22] provided as part of the AT&T discovery, but if it  
[23] wasn't, then it came in as a Westlaw document or  
[24] whatever. But it was all included in the material  
[25] that were responded to here.

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[1] Q: So it was within the materials provided to  
[2] you --  
[3] A: Yes.  
[4] Q: -- by Carr Korein?  
[5] A: Yes, it was.  
[6] Q: Either as part of the discovery provided by  
[7] AT&T --  
[8] A: Right.  
[9] Q: -- or otherwise?  
[10] A: That's right.  
[11] Q: And you mentioned AT&T filings before the  
[12] FCC; is that correct?  
[13] A: I believe so, yes.  
[14] Q: And then an order from the FCC in late  
[15] 1983?  
[16] A: That's correct.  
[17] Q: Okay. Any other orders of the FCC that you  
[18] saw?  
[19] A: Well, I'm sorry. I'm sure that I have read  
[20] other orders involved in the second Computer  
[21] Inquiry at various points in that long and  
[22] illustrious set of proceedings, but I do not now  
[23] recall exactly which ones they are.  
[24] Q: Okay. What about comments or filings by  
[25] parties other than AT&T in the Computer Inquiry

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[1] proceedings; did you review any of those?  
[2] A: There were some comments in the files, and  
[3] there were references to comments by others; and I  
[4] now can't recall if I'm remembering the references  
[5] or the actual comments. I'm sorry.  
[6] Q: Okay.  
[7] A: I don't recall.  
[8] Q: Did you review comments filed by the Maine  
[9] commission to the FCC on second Computer Inquiry?  
[10] A: Actually I now recall asking if the law  
[11] firm could locate any comments by Maine, and I did  
[12] get a document completely in opposite to any of the  
[13] issues I was interested in. So I didn't -- I  
[14] didn't do much with it. I mean, it was a three- or  
[15] four-page letter.  
[16] Q: Have you ever seen those comments before  
[17] they were provided --  
[18] A: No.  
[19] Q: -- to you by Carr Korein?  
[20] A: No.  
[21] Q: You told me a few minutes ago what your  
[22] hourly rate or rates are in the case, and so I want  
[23] to ask you what -- what amount of time -- How many  
[24] hours have you invested in the case to date?  
[25] A: I would have to search my records to answer



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[1] that question.  
[2] Q: Do you send bills or have you sent bills to  
[3] Carr Korein?  
[4] A: I do send bills and I have sent bills.  
[5] Q: How much have you billed to date?  
[6] A: I do not know that information. I would  
[7] have to research my files to know that information.  
[8] Q: What would you review?  
[9] A: The invoices.  
[10] Q: As you sit here today, can you give me any  
[11] number on which you've billed to date? Do you have  
[12] any recollection of that at all?  
[13] A: I would hesitate to give an estimate. It  
[14] would be something that is easy to determine, and  
[15] so I -- I don't have an estimate.  
[16] Q: We need to look at the invoices?  
[17] A: Yes.  
[18] Q: Were those provided as part of the files  
[19] for copying in the anticipation of your deposition  
[20] here today?  
[21] A: Not by me.  
[22] Q: And I asked you total amount. I'm sorry if  
[23] I asked you this before. I'll just ask you again  
[24] and ask you to indulge me. How about total hours;  
[25] can you tell me total hours you've put into the

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[1] case?  
[2] A: I'm sorry. Offhand I cannot.  
[3] Q: You've worked on the case since early  
[4] summer of this year?  
[5] A: That's correct.  
[6] Q: What percentage of your total consulting  
[7] business does this case occupy currently?  
[8] A: I'm sorry. I'd have to think about that  
[9] for a while. Would you like for me to think about  
[10] that for a minute?  
[11] Q: Yes, if you would, please.  
[12] A: Sure. Thinking about it from the  
[13] perspective of an annual amount of time, if we  
[14] annualized it, and we haven't completed a year's  
[15] worth of work in this case, geesh, I'm sorry. 20  
[16] percent.  
[17] Q: Okay.  
[18] A: Something like that.  
[19] Q: What about if rather than annualizing you  
[20] take it from the time period that you began  
[21] involvement, let's say June -- although I know you  
[22] said without the letter you can't give me -- does  
[23] that seem like a fair place to start, June of this  
[24] year?  
[25] A: Yes.

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[1] Q: June to the present, so you're talking  
[2] about --  
[3] A: June, July, August --  
[4] Q: I know; I was going to do the same thing.  
[5] A: That would be --  
[6] Q: Take that number of months and can you tell  
[7] me based on that what percentage of consulting  
[8] business this case has provided over that period of  
[9] months?  
[10] A: Maybe a third.  
[11] Q: What other current clients do you have?  
[12] A: Right this minute?  
[13] Q: Uh-huh.  
[14] A: New Jersey Division of Ratepayer Advocate  
[15] for two cases, one involving the connective merger.  
[16] Do you want me to list the exact cases I'm working  
[17] on or just the clients?  
[18] Q: Just the clients.  
[19] A: New Jersey Division of Ratepayer Advocate,  
[20] Pennsylvania Office of Consumer Advocate, the  
[21] Canadian consumer advocacy groups, the Oak Ridge  
[22] National Laboratory of the U.S. Department of  
[23] Energy. May I refresh my memory by looking at this  
[24] resume here? NASUCA, AARP.  
[25] MR. MARKER: Do you want to spell NASUCA?

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[1] A: The National Association of State Utility  
[2] Consumer Advocates. AARP, you know who they are.  
[3] There may be more, but those are the ones that  
[4] occur to me offhand. Sorry.  
[5] Q: With that list of your current clients,  
[6] other than the Canadian consumer advocacy groups  
[7] that you identified, are there any of the other  
[8] clients for which you're doing work on  
[9] telecommunications issues?  
[10] A: Yes.  
[11] Q: Which ones?  
[12] A: The New Jersey Division of Ratepayer  
[13] Advocate. I am an expert witness in their  
[14] proceeding to consider an application by Verizon  
[15] for a five-year alternative rate plan.  
[16] Q: And is that before -- in proceedings before  
[17] the New Jersey board?  
[18] A: Yes.  
[19] Q: Any of the others?  
[20] A: The Canadian ones are telephone related. I  
[21] have done work for the Pennsylvania OCA on  
[22] telephone matters, but I'm not currently engaged on  
[23] that issue with them.  
[24] Q: We'll go through the resume in a minute,  
[25] but just focusing on current --

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[1] A: Yes.  
[2] Q: -- engagements --  
[3] A: Okay.  
[4] Q: -- would it be the New Jersey Ratepayer  
[5] Advocacy Group and the Canadian groups that you  
[6] identified?  
[7] A: Definitely yes. I'm just trying to see if  
[8] there are any others. I have to think a minute.  
[9] Those are the ones that immediately come to mind.  
[10] Q: Okay. Were there any items that you asked  
[11] for -- asked to see, be provided that you weren't  
[12] given?  
[13] A: No.  
[14] Q: Anything you asked for that wasn't turned  
[15] up?  
[16] A: No.  
[17] Q: Let me just go through to make sure that  
[18] I've covered all of the various documents that  
[19] either you were given or have generated. We've  
[20] talked about a number of things, the boxes that you  
[21] were given by Carr Korein, your files that you  
[22] returned here for copying in anticipation of the  
[23] deposition, which includes the computer records,  
[24] the e-mails, and all the rest.  
[25] Are there any other materials that you have

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[1] reviewed or consulted in preparation for your  
[2] opinions and testimony that we haven't already  
[3] addressed?  
[4] A: I'm sorry. I can think of nothing other  
[5] than that, those.  
[6] (Defendants' Exhibits Alexander 3  
[7] and 4 marked for identification.)  
[8] Q: Ms. Alexander, I'm handing you Exhibits 3  
[9] and 4, and I show you three first, or focus on  
[10] three first.  
[11] A: Yes.  
[12] Q: Have you seen the document before? It's a  
[13] letter to my firm, so you might not have, but I'll  
[14] ask the question.  
[15] A: No, I haven't seen that letter before.  
[16] Q: The letter makes reference to various  
[17] videotapes; do you see that?  
[18] A: Yes, I do.  
[19] Q: Were you provided videotapes in the case?  
[20] A: Yes.  
[21] Q: What videotapes did you see? And I just  
[22] ask you for a general description of the types of  
[23] videos.  
[24] A: Sure. A couple videos were film focus  
[25] groups. Other videos were internal training videos

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[1] for AT&T consumer leasing, and of -- and a whole,  
[2] you know, seven or eight videos that had copies of  
[3] AT&T advertising and customer communication-type  
[4] videos, designed for the general public. Yes.  
[5] Q: Would that pretty much describe the  
[6] categories of all the videos that you reviewed?  
[7] A: Yes.  
[8] Q: Okay. And I understand that you haven't  
[9] seen this letter before, but if you'll notice it  
[10] lists DCR Bates numbers for videos; do you see  
[11] that?  
[12] A: I do.  
[13] Q: Do you have any sort of record or list of  
[14] the videos that you reviewed?  
[15] A: No. I have the videos.  
[16] Q: You have the videos, but no list of what  
[17] those were?  
[18] A: I did not prepare a list.  
[19] Q: What about any notes that you made based on  
[20] those videos; do you have anything like that?  
[21] A: No.  
[22] Q: So as you watched the various videos, you  
[23] made no record of what you observed?  
[24] A: The ones I was particularly interested in  
[25] were repetitive, and I referred to them in my

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[1] report in terms of my characterization of them, but  
[2] I did not quote them or feel the need to quote  
[3] them. So no, I didn't take any notes.  
[4] Q: So any written record that you made of the  
[5] videotapes or contents thereof would be found  
[6] within your report?  
[7] A: That's correct.  
[8] Q: Anyplace else that you're aware of?  
[9] A: No.  
[10] Q: And you said that you had ones that you  
[11] were particularly interested in that were  
[12] repetitive. What do you mean by that?  
[13] A: The advertisements and announcements and --  
[14] well, advertisements that occurred in the '83, '84,  
[15] '85 time period.  
[16] Q: Any other videotapes beside from the  
[17] advertising that you relied on for your report?  
[18] A: Other than those that we've listed here or  
[19] that are reflected in this list, no.  
[20] Q: Well, my question is a little different.  
[21] As I understood it, your testimony, that there were  
[22] certain videotapes that you said were repetitive or  
[23] you had particular interest in that you made  
[24] reference to in your report. Did I get that one  
[25] right?

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11 A: Yes.  
12 Q: Okay. And when I asked you to explain, you  
13 said they were advertisements, announcement kind of  
14 videotapes?  
15 A: Yes.  
16 Q: What about with regard to the focus group  
17 videotapes; did you rely upon any of those in your  
18 report?  
19 A: Well, I relied on everything that I  
20 reviewed. Did I quote from them or make reference  
21 to them? The answer to that is no. But I reviewed  
22 many documents that I did not quote or make  
23 specific reference to when reaching my conclusions.  
24 Q: Can you point to any particular statement  
25 or content in the focus group videotapes that is  
26 referenced in your report?  
27 A: I do not recall a specific reference to any  
28 of the videotapes other than the advertisements at  
29 this point, but I viewed those other tapes, didn't  
30 find the need to quote from them. They did not  
31 alter my views of -- in any way or provide me with  
32 any specific additional support or evidence in any  
33 way, so I didn't quote them.  
34 Q: Have you -- Let me back up for a second.  
35 We talked about e-mail communications, and you told

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1 me that you had communicated with one of the other  
2 experts Plaintiff has identified in the case.  
3 Ms. TerKeurst.  
4 A: Yes.  
5 Q: Have you talked with Ms. TerKeurst about  
6 either her opinions or your opinions in the case?  
7 A: Not in terms of opinions, but we have  
8 communicated.  
9 Q: Telephone communications?  
10 A: Yes.  
11 Q: Face-to-face?  
12 A: Yes.  
13 Q: Tell me, if you would, the nature of the  
14 telephone communications, the content as  
15 specifically as you can recall it.  
16 A: There were only a few. In the early  
17 summer, Matt informed me that the firm had perhaps  
18 already at that point or was going to -- I don't  
19 recall the nature of the verb used -- had an  
20 arrangement or communications initiated with  
21 Charlotte TerKeurst. And I said, Well, I know  
22 Charlotte TerKeurst; and I said, Do you mind if I  
23 call her to find out, you know, what the role --  
24 you know, what she knows about this case, get  
25 additional background information? I was also

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1 trying to learn about this law firm, of which I  
2 knew nothing until I heard the phone call. And  
3 wanted -- So I called her and communicated about  
4 what she knew of this law firm and about whether  
5 she was going to participate in the case and, you  
6 know, what it is she knew generically about what  
7 the case was about and so forth, very generic.  
8 That was one conversation.  
9 Q: And you said that you spoke with her a few  
10 times. How many times have you talked with her in  
11 connection with this case?  
12 A: Two or three times.  
13 Q: You said that you know Ms. TerKeurst?  
14 A: Yes, I do.  
15 Q: I believe you said that you told  
16 Mr. Armstrong I know her?  
17 A: That's correct.  
18 Q: How do you know her, or how did you know  
19 her before the involvement in this case?  
20 A: I had -- had professional interaction with  
21 her in the sense that I knew she did consulting  
22 work that related to telephone matters as well as  
23 others as far as I know. I believe -- had  
24 previously been on the staff of the Illinois  
25 Commerce Commission, had done some work on a

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1 service quality investigation involving Ameritech  
2 in Illinois as a second phase of a proceeding that  
3 I had also appeared in on behalf of the consumer  
4 advocate, the Citizens Utility Board in Illinois,  
5 on the same set of issues and facts. And we had  
6 met each other at conferences and so forth.  
7 Q: And so you knew her professionally?  
8 A: Yes.  
9 Q: Before you ever talked to her in this case?  
10 A: Yes.  
11 Q: Do you know if Ms. TerKeurst recommended  
12 you to Carr Korein?  
13 A: I do not know.  
14 Q: Okay. In that first phone call you made to  
15 her after you learned about this case, what did she  
16 tell you?  
17 A: I believe she told me that she had  
18 performed expert witness services for this firm in  
19 the past or at least analyzed some issues for them  
20 on other litigation in the past, and she didn't  
21 know very much about this case either at this point  
22 in terms of background; and we agreed to, you know,  
23 stay in touch.  
24 Q: Okay. Did she tell you in that initial  
25 phone call whether she'd reached any opinions in



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[1] the case?  
[2] A: I do not recall that, no.  
[3] Q: In any subsequent phone calls or  
[4] face-to-face meetings, did you ever discuss your  
[5] respective opinions in the case?  
[6] A: The discussions that occurred were  
[7] primarily from the perspective of organizing,  
[8] communicating about the scope, depth, and content  
[9] of the information. We tried in early days to  
[10] develop a mutually agreeable outline of the key  
[11] categories of the documents. She had people  
[12] working for her and I do not, did not, and had  
[13] prepared a summary of the depositions which she  
[14] shared with me. We, in the early days, exchanged  
[15] outlines of the kinds of issues we were going to  
[16] address and asked ourselves questions about did you  
[17] find any materials in these boxes which she was  
[18] getting and I was getting about and, you know,  
[19] premise visits, hard wire, modular conversion kits,  
[20] disclosures of a particular thing. It was more of  
[21] a communication about the process and not the  
[22] substance.  
[23] Q: Okay. Did you ever consult with  
[24] Ms. TerKeurst about your opinions in this case or  
[25] your expert report?

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[1] MR. MARKER: Just for clarification, you  
[2] mean beyond what she described, of course, right?  
[3] Q: Well, let me ask it a different way. If I  
[4] understand what you've just testified to, your  
[5] discussions with Ms. TerKeurst primarily related to  
[6] organizing materials and, you know, what kinds of  
[7] materials needed to be, you know, obtained and  
[8] categorized; is that fair?  
[9] A: That's certainly correct.  
[10] Q: Okay. So with that understanding, I want  
[11] to ask the next question. Did you ever consult  
[12] with her beyond that with regard to the substance  
[13] of your opinions or your expert report?  
[14] A: In the context of discussing the issues  
[15] that I described, there were obviously asides made  
[16] between the two of us about, you know, our opinion  
[17] about this inextraordinarily (sic) generic kind of  
[18] approach. There was no exchange of reports. There  
[19] was no, you know -- you know, paragraph this,  
[20] paragraph that kind of discussion at all. It was  
[21] of the most preliminary and generic nature in the  
[22] early days of our review of these files.  
[23] Q: What about at any point; have you consulted  
[24] with Ms. TerKeurst about your opinions in the case  
[25] or -- Let me strike that. That's a bad question.

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[1] You said that you never discussed that or  
[2] consulted about the substance in the preliminary  
[3] stages. I guess I just want to know: At any  
[4] point, be it preliminary or not, have you done so?  
[5] A: No.  
[6] Q: Have you seen a copy of Ms. TerKeurst's  
[7] expert report in the case?  
[8] A: No, I have not.  
[9] Q: Did you ever provide her a copy of yours?  
[10] A: No.  
[11] Q: You mentioned a moment ago at some point  
[12] the two of you exchanged outlines of the kinds of  
[13] issues that you were trying to address.  
[14] A: Uh-huh.  
[15] Q: Describe that, if you could, to me. What  
[16] form was that in?  
[17] A: One or two pages, three pages, of, you  
[18] know, Roman numerals, you know, key headings,  
[19] subheadings. I mean, as far as I was concerned, I  
[20] used that document to then write my report with.  
[21] Q: Who developed the outline?  
[22] A: I did, of mine. She did of hers, I  
[23] presume.  
[24] Q: So you each developed an outline?  
[25] A: Oh, yes.

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[1] Q: Did you exchange those?  
[2] A: We viewed them.  
[3] Q: You viewed hers; she viewed yours?  
[4] A: Right.  
[5] Q: How did that happen?  
[6] A: At a meeting.  
[7] Q: When was that?  
[8] A: We met in Chicago.  
[9] Q: When?  
[10] A: August sometime.  
[11] Q: 2001?  
[12] A: Yes, briefly.  
[13] Q: Who was at the meeting?  
[14] A: Matt Armstrong, Charlotte TerKeurst, I,  
[15] some of her staff people whose names, I'm sorry, I  
[16] do not remember.  
[17] Q: Anyone else?  
[18] A: No.  
[19] Q: Where did you meet?  
[20] A: In Charlotte's office in Chicago.  
[21] Q: How long was the meeting?  
[22] A: Three hours.  
[23] Q: And I believe you said the way you got into  
[24] talking about the meeting --  
[25] A: Yes.



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[1] Q: -- Is that you viewed her outline of  
[2] issues --  
[3] A: Yes.  
[4] Q: -- or potential opinions; is that fair?  
[5] A: Yes.  
[6] Q: And she reviewed yours?  
[7] A: Yes.  
[8] Q: And then did you leave her with a copy, or  
[9] did you take back a copy?  
[10] A: I didn't leave her with a copy. We were  
[11] basically trying to figure out if there was a way  
[12] to make sure that we had in fact seen, found, or  
[13] needed to find all of the information we each  
[14] individually wanted to locate or review or consider  
[15] in the context of making our own opinions.  
[16] Q: Did you adjust your opinions or your  
[17] outline of expected opinions at all based upon that  
[18] meeting?  
[19] A: No.  
[20] Q: So you didn't remove any opinions or alter  
[21] them --  
[22] A: No.  
[23] Q: -- from that point --  
[24] A: No.  
[25] Q: -- or add to them?

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[1] A: No.  
[2] Q: Did you and Ms. TerKeurst talk about the  
[3] need to make sure your opinions were consistent?  
[4] A: No.  
[5] Q: The outline that you described providing,  
[6] you showed a copy of your outline, correct?  
[7] A: Yes.  
[8] Q: Did you take all of the -- Did you take the  
[9] copy back with you, or did you leave copies for  
[10] anyone in the room?  
[11] A: I took it back with me.  
[12] Q: Did you provide copies to Carr Korein?  
[13] A: I do not recall. I don't recall. I  
[14] mean --  
[15] Q: Have you at any time provided to Carr  
[16] Korein that outline?  
[17] A: Well, because Matt Armstrong was at this  
[18] meeting, he saw that outline, of course.  
[19] Q: And did you give him a copy?  
[20] A: I'm sure I gave him the outline, and I do  
[21] not now recall if there was any copies as such  
[22] made. It was a piece of paper and three people at  
[23] the table.  
[24] Q: Do you still have a copy?  
[25] A: No, because what I did was use it as the

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[1] basis for writing this document.  
[2] Q: So if I understand, it would not have been  
[3] within the materials that you sent to Carr Korein  
[4] recently to copy for the deposition?  
[5] A: No, because I didn't keep it in that  
[6] format.  
[7] Q: All right. It's not still on your system?  
[8] A: No.  
[9] MR. MARKER: Off the record.  
[10] (Off the record.)  
[11] MR. ARMSTRONG: During the break, we talked  
[12] about the production of documents, and I want to  
[13] clarify, I think, what was a miscommunication  
[14] either between me and Ketrina or Ketrina and  
[15] Barbara. We produced ten, eleven boxes of  
[16] documents, which was everything in Barbara's file.  
[17] I then learned that four of the boxes -- The way we  
[18] did that was we kept copies of everything we sent  
[19] to her and copies of everything she sent to us. I  
[20] since learned that four boxes had been culled out  
[21] and organized, and I thought you deserved the  
[22] benefit of her thinking in the organization. So  
[23] those boxes were recopied and reproduced to you,  
[24] although you already had that information in the  
[25] original ten boxes. All right? I just want to

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[1] make sure that's clear on the record, because I  
[2] don't think it came out that way; and Barbara  
[3] wouldn't know because that is what I did, not what  
[4] Barbara did. With respect to the videotapes, per  
[5] our agreement, Ketrina, we did not produce copies  
[6] of the videotapes, because we both have copies and  
[7] didn't see any sense of that extra expense.  
[8] MS. BAKEWELL: Sure. I understand.  
[9] MR. ARMSTRONG: With that I'll let you take  
[10] it up.  
[11] Q: (By Ms. Bakewell) I don't want to prolong  
[12] the issue, but let me just ask a question for  
[13] clarification. When we were talking earlier about  
[14] documents that you've been provided by Carr Korein  
[15] in a composite of various shipments, I believe you  
[16] told me it was 15 or more boxes.  
[17] A: In total, yes.  
[18] Q: In total. Do you have any records in your  
[19] possession that would confirm the quantity of boxes  
[20] received?  
[21] A: No, because they would be FedEx shipment  
[22] records on boxes I received that I didn't retain.  
[23] The discrepancy between 10 and 15 is merely due to  
[24] my culling of the duplicative materials and those  
[25] that were clearly not within my subject matter and

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[1] sending them back.  
[2] Q: So when you say 15, that's inclusive of the  
[3] materials that you returned?  
[4] A: That's correct.  
[5] Q: Okay.  
[6] MR. ARMSTRONG: As long as we're on the  
[7] point, there are also boxes that we shipped out  
[8] that weren't full, that are half full, and may have  
[9] been combined into one box.  
[10] A: True.  
[11] MR. ARMSTRONG: Like you, we shipped a lot  
[12] of boxes that were half stuffed.  
[13] Q: I'm just trying to determine when you say  
[14] 15 --  
[15] A: Yes.  
[16] Q: -- boxes, are we talking about the same  
[17] thing that we know we've received?  
[18] A: (Witness moved head up and down.)  
[19] Q: You also mentioned, Ms. Alexander, as far  
[20] as fees charged to date in the case that we need to  
[21] look at the invoices or statements that you've sent  
[22] to Carr Korein to know what that total is.  
[23] A: Yes.  
[24] Q: What's your best estimate to date of the  
[25] total fees charged?

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[1] A: I think you asked me that, and I feel that  
[2] I can't give you a very good estimate. I can't do  
[3] it.  
[4] MR. ARMSTRONG: Let me clear that up.  
[5] Ketrina, at lunch I'll look for the latest invoice  
[6] and give it to you.  
[7] A: Get the facts is the preferred approach.  
[8] Q: All right. So if we need -- If we want  
[9] that information, we need to look at the invoices?  
[10] A: Sure.  
[11] Q: And I would ask that those be provided.  
[12] You also, I believe, mention in your proposal a  
[13] retainer. Did I understand that correctly?  
[14] A: Yes.  
[15] Q: Was a retainer requested and provided?  
[16] A: Yes.  
[17] Q: What was that?  
[18] A: \$2500.  
[19] Q: Have subsequent retainers been provided, or  
[20] has it simply been payment upon invoice?  
[21] A: The latter.  
[22] Q: Okay. And one other cleanup. We marked  
[23] Exhibit 4 to your deposition. Let me have you take  
[24] a look and ask if you've ever seen that before.  
[25] A: I have not seen this letter. I have seen

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[1] this attachment to the letter.  
[2] Q: What is the attachment?  
[3] A: A list of treatises and books that I  
[4] consulted, and when I asked this office if I should  
[5] disclose this information, they said yes.  
[6] Q: Let me ask you with regard to the first  
[7] treatise, and if you could just identify what that  
[8] is in the record.  
[9] A: Consumer Law: Sales Practice and Credit  
[10] Regulation.  
[11] Q: Is there any particular content or  
[12] statement within that treatise that you rely upon  
[13] for your opinions?  
[14] A: No.  
[15] Q: And the second treatise, could you identify  
[16] that, please?  
[17] A: It's Unfair and Deceptive Acts and  
[18] Practices, Fourth Edition.  
[19] Q: Is there any particular statement or  
[20] content within that treatise that you rely upon for  
[21] your opinions?  
[22] A: No.  
[23] Q: Do you have any disagreement or quarrel  
[24] with any of the content of either treatises?  
[25] A: Disagreement or quarrel?

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[1] Q: Uh-huh.  
[2] MR. MARKER: I object to the foundation. I  
[3] don't think you've laid a foundation that she  
[4] reviewed the entire treatises, so I don't know if  
[5] she's in a position to take issues with parts she  
[6] may not have reviewed. Subject to that, you can  
[7] answer.  
[8] A: I didn't review both books in their  
[9] entirety. I refreshed my recollection with respect  
[10] to general law relating to unconscionability,  
[11] unfair trade practices, Retail Installment Sales  
[12] Acts, and so forth. Those are the only sections of  
[13] the books that I really looked at carefully.  
[14] Q: It states here, does it not, that  
[15] Ms. Alexander also consulted the following  
[16] treatises?  
[17] A: Yes.  
[18] Q: Okay. With regard to the portions that you  
[19] consulted, do you have any quarrel or disagreement?  
[20] A: I didn't read them from that perspective,  
[21] so I would not be able to say.  
[22] Q: As you sit here today, are you able to  
[23] identify any matters that you disagree with in any  
[24] treatise?  
[25] A: I didn't read them to figure out whether I

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[1] disagreed with them or not. I only refreshed my  
[2] recollection with respect to Black Letter Law on a  
[3] variety of topics.  
[4] Q: So the answer would be no, you can't  
[5] identify any areas within those treatises that you  
[6] disagree with?  
[7] A: I would like to stand by the answer I gave  
[8] you.  
[9] Q: Well, and my question is a little  
[10] different, my second question. That is, based upon  
[11] what you've told me, are you able to identify any  
[12] areas you disagree with in those treatises as you  
[13] sit here today?  
[14] A: I'm not able to identify them, because I  
[15] didn't read them to try to identify them for that  
[16] purpose.  
[17] Q: Okay. Let me ask you a few questions about  
[18] your CV, which we marked as Exhibit 1. I think you  
[19] still have that.  
[20] MR. MARKER: You should have a copy, too.  
[21] Q: If not --  
[22] MR. MARKER: If you have an extra, that  
[23] would be great.  
[24] A: I may have given it back to you.  
[25] Q: Let me check, because I think --

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[1] MR. MARKER: Here we go.  
[2] A: Here we go, yes.  
[3] Q: We want to find the one with the exhibit  
[4] marker.  
[5] A: I'm looking at that.  
[6] Q: Okay. Just focusing on your employment  
[7] history quickly, we've talked about your employment  
[8] with the Maine Public Utilities Commission and the  
[9] Consumer Assistance Division.  
[10] A: Yes.  
[11] Q: That was from 1986 to 1996; is that right?  
[12] A: Yes.  
[13] Q: What exactly is the Consumer Assistance  
[14] Division?  
[15] A: The Consumer Assistance Division was new.  
[16] I was the first director of that division. It was  
[17] new in 1986. It is one of five divisions that are  
[18] composed of the Maine Public Utilities Commission,  
[19] five division directors reporting to the three  
[20] commissioners and the office with which I was the  
[21] director and had several functions. Do you want a  
[22] description of those functions?  
[23] Q: If you can give me a general description.  
[24] A: First I supervised employees who received  
[25] communications from Maine consumers about public

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[1] utilities complaints, inquiries, comments, and so  
[2] forth. The second function of the division was to  
[3] act as the commission's expert with respect to the  
[4] consumer services and consumer protection aspects  
[5] of the commission's regulation of public utilities.  
[6] Q: Prior to that position, you were with the  
[7] Bureau of Consumer Credit Protection?  
[8] A: Yes.  
[9] Q: And that's also a Maine organization?  
[10] A: That's a Maine governmental organization in  
[11] the Department of Business Regulation in the State  
[12] of Maine. That office actually does not actually  
[13] exist as an independent entity, but at the time it  
[14] was independent.  
[15] Q: What is it a part of now?  
[16] A: It's part of the Bureau of Banking.  
[17] Q: And you were there from 1979 to 1983?  
[18] A: Yes.  
[19] Q: Again, generally, what were your  
[20] responsibilities in that position?  
[21] A: Director of an agency that had consumer  
[22] education and regulatory authority over consumer  
[23] credit grantors, generally both retail banking,  
[24] automobile, and so forth, governed by the Maine  
[25] Consumer Credit Code, licensed debt collection

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[1] agencies, supervised Maine consumer credit  
[2] reporting agencies. That's the general.  
[3] Q: And the employment before that that you  
[4] list on your resume is Department of Professional  
[5] and Financial Regulation, Augusta, Maine.  
[6] A: Oh, I'm sorry. That is the department that  
[7] the Bureau of Consumer Credit Protection is a part  
[8] of. That was its name at the time.  
[9] Q: Not a separate --  
[10] A: No, it is not.  
[11] Q: And you received your law degree in 1976?  
[12] A: Yes.  
[13] Q: What did you do between 1976 and 1979?  
[14] A: Had a child and opened -- did independent,  
[15] self-employed consulting for state agencies,  
[16] private individuals, most of which was oriented  
[17] toward environmental regulation.  
[18] Q: During that period did you do work for any  
[19] private businesses?  
[20] A: I don't think so. Most of it was  
[21] consulting with the state Department of  
[22] Environmental Protection, with some citizens  
[23] groups. It was almost all related to environment  
[24] regulation.  
[25] Q: I want to go back to just page 1 of your CV



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[1] for a second. I'm not going to ask you about every  
[2] one of these. Your work with the AARP --

[3] A: Yes.

[4] Q: -- what has been the nature -- Well,  
[5] that's a bad question. What subject areas or  
[6] utilities or businesses have you consulted with the  
[7] AARP regarding?

[8] A: The AARP has hired me to do two different,  
[9] generically different, types of work. One is to  
[10] provide them with assistance in a particular state  
[11] on a particular proceeding, as their expert  
[12] witness, in which they may have intervened before  
[13] the Public Utilities Commission. In West Virginia,  
[14] I prepared comments on their behalf on draft rules  
[15] and the policies that ought to be included in  
[16] forthcoming electric restructuring legislation. In  
[17] California, I have submitted comments on their  
[18] behalf before the California Public Utilities  
[19] Commission on low-income programs and how to  
[20] increase the penetration of those programs among  
[21] low-income customers of electric and gas utilities  
[22] in California.  
[23] I have also worked for them on some  
[24] national projects, one of which has to do with the  
[25] development, of which is not a development they are

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[1] disclosures on all of their documents that they  
[2] have consultant's rights, making it clear that this  
[3] is not to be held -- to be their opinions on the  
[4] matter.

[5] Q: Okay. So there is that sort of  
[6] qualification on that particular document?

[7] A: Oh, yes.

[8] Q: Since we're on page 3, if you look kind of  
[9] the bottom third, it makes reference to a LEAP,  
[10] L-E-A-P, letter. Do you see that?

[11] A: Yep.

[12] Q: What is that?

[13] A: That is a private publication by William A.  
[14] Spratley & Associates in Columbus, Ohio. They have  
[15] a website I can refer you to, and they publish a  
[16] for-subscription letter that they market to those  
[17] interested in electric restructuring.

[18] Q: Okay. On page 2 through 4 of your resume,  
[19] you list a variety of testimony or testimonies that  
[20] you provided before various bodies, and I'm not  
[21] going to go through each one of those. But I'll  
[22] just ask you if you have ever given testimony on  
[23] any telephone equipment issue or issue related to  
[24] the provision of telephone equipment?

[25] A: No.

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[1] Initiating, but one that they're monitoring,  
[2] uniform business practices for electric and gas  
[3] restructuring.

[4] Q: Have you ever done any sort of consulting  
[5] or other work for the AARP on any  
[6] telecommunications issues?

[7] A: Let me think a minute. No.

[8] Q: You also make reference on page 1 to, under  
[9] recent clients, U.S. Department of Energy,  
[10] publication on state consumer protection issues for  
[11] electric competition.

[12] A: Yes.

[13] Q: Do you see that? What was that  
[14] publication?

[15] A: That publication is listed on page 3 about  
[16] a third of the way down, Retail Electric  
[17] Competition: A Blueprint for Consumer Protection.

[18] Q: I see that. Was that publication endorsed  
[19] by the DOE?

[20] A: No. Merely funded by the office in  
[21] question here.

[22] Q: So the DOE did not approve or review the  
[23] content of it?

[24] A: Well, certainly there were officials there  
[25] that reviewed it, but they as usual have massive

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[1] Q: And the telecommunications-related  
[2] testimony, I believe, you've described previously  
[3] in your testimony here today?

[4] A: I believe that I have, yes.

[5] Q: Have you ever given any testimony regarding  
[6] the deregulation of any telecommunications service?

[7] A: Yes.

[8] Q: What generally have you -- Well, let me  
[9] rephrase that. On what specific telecommunications  
[10] issues have you given testimony related to  
[11] deregulation?

[12] A: The move to competition for local telephone  
[13] service, the consumer protections that should  
[14] accompany that process, the code of conduct that  
[15] should be applicable to the local phone company in  
[16] its interactions with consumers when services are  
[17] made competitive, the service quality and consumer  
[18] protection rules generally that should accompany  
[19] the move to telephone competition at the local  
[20] level. I also assisted the NASUCA in providing  
[21] comments to the FCC on some dockets over the past  
[22] several years that we would call truth in billing  
[23] matters, antislamming regulations.

[24] Q: And when you say truth in billing and  
[25] antislamming, are those connected, or are you

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[1] talking about two different courses of testimony?  
[2] A: They are two different dockets and I  
[3] believe were -- yes, both were separate. But in  
[4] that case, it was not testimony by me but by me  
[5] assisting and preparing their own commission of  
[6] comments.  
[7] Q: And the truth in billing issues that you  
[8] assisted with, are those identified in your resume?  
[9] A: Well, they may not be if I did not file  
[10] them under my name. So let me check.  
[11] Q: Sure.  
[12] A: And I will tell you if they are. I have  
[13] forgotten also, if I could back up and indicate  
[14] that I also submitted testimony on low-income  
[15] program related to telephone service, universal  
[16] service matters. I just see I've forgotten to  
[17] provide you with that summary. No, I do not see  
[18] the comments that I prepared for consideration by  
[19] NASUCA and which NASUCA then filed before the FCC.  
[20] Q: Could you spell NASUCA for the record,  
[21] please?  
[22] A: Yes, I will. N-A-S-U-C-A.  
[23] Q: Do you know the name of the document where  
[24] that was filed?  
[25] A: Offhand I don't, but I certainly -- I mean,

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[1] it's findable. I just don't have it offhand. But  
[2] the words truth in billing appeared in the docket  
[3] description, and the slamming rules are known  
[4] formally as customer authorization for the change  
[5] in telephone service provider.  
[6] Q: And the NASUCA comments that you worked on  
[7] those were for filing before the FCC?  
[8] A: That's correct.  
[9] Q: You listed a number of categories of  
[10] testimony that you've provided on  
[11] telecommunications issues such as low-income  
[12] programs, local phone, code of conduct, and the  
[13] various other ones you listed. Would it be fair to  
[14] say that all of those address controls that would  
[15] apply to telephone companies after the detariffing  
[16] of some service?  
[17] A: Not necessarily. Most states are not  
[18] moving to detariff the charge for local basic phone  
[19] service, but they are still -- By the incumbent,  
[20] the incumbent local exchange carrier. But they are  
[21] opening that service potentially to new entrants  
[22] who can go out and compete with the incumbent with  
[23] regard to the services that are in fact tariffed by  
[24] the ILEC but not tariffed necessarily by the  
[25] competitor. And in that situation I am proposing

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[1] often consumer education, consumer protection,  
[2] service quality aspects of the move to that system.  
[3] Q: So my misstatement would be in saying for  
[4] detariff service instead we'd be talking about  
[5] controls or further regulation on a regulated  
[6] company that nevertheless was being subject to  
[7] competition?  
[8] A: Yes.  
[9] Q: Okay.  
[10] MR. MARKER: Just for Pamela's benefit,  
[11] ILEC, do you want to spell that for her?  
[12] A: I-L-E-C. Let me also add, many of these  
[13] controls and regulations are then applicable to the  
[14] competitors as well, licensing, disclosure,  
[15] contract regulation, consumer protection,  
[16] education, and so forth.  
[17] Q: Have you ever held a job working for a  
[18] business?  
[19] MR. MARKER: I'm sorry. Would you read the  
[20] question back? I was not paying attention.  
[21] A: Would you define business?  
[22] Q: Private.  
[23] MR. MARKER: Let me hear the question  
[24] again, please.  
[25] A: I'm sorry.

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[1] (The requested portion of the  
[2] record read by the reporter.)  
[3] Q: I should say other than your own current  
[4] business. May be overinclusive. Let me state it  
[5] this way. Have you ever held a job with a private  
[6] company or business other than your own consulting  
[7] firm?  
[8] A: Sure.  
[9] Q: Who have you held a job with?  
[10] A: National Resources Defense Council, U.S.  
[11] Senate, Environmental Action, Friends of the Earth.  
[12] Those are the ones that immediately come to mind.  
[13] Q: And I'm sorry I missed after U.S. Senate.  
[14] Environment Action?  
[15] A: Action, an organization that I do not  
[16] believe now exists, but which was the organization  
[17] that conducted the Earth Day in 1970.  
[18] MR. ARMSTRONG: April 20th.  
[19] A: You got it.  
[20] Q: You include the U.S. Senate?  
[21] A: Yes, for a short time.  
[22] Q: What was your employment there?  
[23] A: I worked for one of the late Senator Phil  
[24] Hart's committees, one of his investigatory  
[25] committees, for six to eight months perhaps on a

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[1] particular project involving the effect of  
[2] environment deterioration in low-income and urban  
[3] neighborhoods.  
[4] Q: What did you do for the National Resources  
[5] Defense Council? And that is C-O-U-N-C-I-L or  
[6] S-E-L?  
[7] A: C-I-L. It's a national environmental  
[8] organization. At the time I worked for them, which  
[9] would have been in the early 1970s, '71, '72, I  
[10] worked on -- I was not an attorney. I worked as an  
[11] advocate working with an attorney on implementation  
[12] work for the national -- recently enacted national  
[13] Clean Water Act.  
[14] Q: What about with Environment Action?  
[15] A: Earth Day.  
[16] Q: Friends of the Earth?  
[17] A: Lobbying.  
[18] Q: For?  
[19] A: Clean Air Act, Clean Water Act.  
[20] Q: You were a lobbyist for Friends of the  
[21] Earth?  
[22] A: That's correct.  
[23] Q: When was that?  
[24] A: '71.  
[25] Q: Other than National Resources Defense

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[1] Council, the U.S. Senate, which I'm not sure if  
[2] that's a business, but we'll include that --  
[3] A: I hear you.  
[4] Q: -- Environmental Action, Friends of the  
[5] Earth, have you ever held a job or position with  
[6] any company or business aside from your own  
[7] consulting?  
[8] MR. MARKER: I assume your question is  
[9] broad enough to encompass her entire life, not just  
[10] her professional work?  
[11] A: The Conservation Foundation. I forgot.  
[12] There was a life before.  
[13] Q: And did you do --  
[14] A: Research.  
[15] Q: Have you ever held a job with any company  
[16] or business that did not involve some environmental  
[17] or other consumer activist-type work?  
[18] A: Not that I recall. And I will exclude in  
[19] that statement part-time high school jobs.  
[20] Q: That's fine.  
[21] A: Jobs held in college at the local  
[22] bookstore. I was quite a waitress at one point in  
[23] my life as well, but I presume you're not  
[24] interested in that.  
[25] Q: I won't go into it. All right. Have you,

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[1] for any of the entities that you've identified,  
[2] ever prepared a business plan?  
[3] A: No.  
[4] Q: Have you ever prepared a prospectus for a  
[5] business or organization?  
[6] A: A prospectus from the perspective --  
[7] from -- for investors?  
[8] Q: Investors or --  
[9] A: That's my use of the term prospectus, is  
[10] typically it's given to a potential investor.  
[11] Q: Well, let's take that understanding of  
[12] prospectus. Have you prepared a prospectus of that  
[13] type or any other nature for a business?  
[14] A: Well, of that type, no. So I don't know  
[15] what else you might mean by that term, but if I  
[16] understand the term as I defined it, the answer is  
[17] no.  
[18] Q: Okay. Have you ever prepared a financial  
[19] statement for a business?  
[20] A: No.  
[21] Q: Have you ever prepared a marketing plan for  
[22] a business?  
[23] A: My own.  
[24] Q: Okay. What is your marketing plan?  
[25] A: When I left the Maine PUC in 1996, I did an

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[1] outline of the kind of work I wanted to do, the  
[2] kind of clients I wanted to attract, and consulted  
[3] with a number of colleagues informally about how to  
[4] pursue that objective. I did not need or obtain a  
[5] bank loan, because I was able to obtain clients  
[6] quite quickly, so --  
[7] Q: And that's a good description.  
[8] A: Yes.  
[9] Q: Let me ask whether you ever committed to  
[10] writing a formal -- Well, formal is maybe not the  
[11] right word. Did you ever commit to written form a  
[12] marketing plan for your current consulting  
[13] business?  
[14] A: I'm sure I did at the time. I certainly  
[15] have not retained any such document advertise  
[16] point, but at that time I'm sure I had something  
[17] that had the equivalent information in it, yes.  
[18] Q: And I'm taking from your testimony you  
[19] don't have anything like that currently?  
[20] A: I don't, no.  
[21] Q: Other than your resume that you might send  
[22] out to potential clients, do you have any sort of  
[23] promotional materials or marketing materials on  
[24] yourself that you provide?  
[25] A: When I speak at conferences, there's



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[1] usually a paragraph that appears in the program  
[2] that describes my general area of expertise and so  
[3] forth that has been used frequently, but it's  
[4] basically a one-paragraph summary of all the  
[5] information that's here.

[6] Q: Okay. Let's look for a second at your  
[7] education, and I know we went through that you have  
[8] your degree from the University of Michigan and  
[9] then your law degree from University of Maine, I  
[10] believe.

[11] A: Yes.

[12] Q: In any of your coursework at either  
[13] university, did you take any accounting or business  
[14] courses?

[15] A: Sure, but I -- Well, let me tell you what  
[16] my understanding of your -- of what it is you're  
[17] asking, and if I'm not giving you the answer you  
[18] want, I'm sure you'll let me know. I took  
[19] economics at the University of Michigan. I took  
[20] statistics. And at the University of Maine School  
[21] of Law, I must have taken trusts and estates,  
[22] commercial law, contract law. Is that the kind of  
[23] information you're looking for?

[24] Q: Sure. I'll just ask: Is there any other  
[25] type of educational course that you've taken that

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[1] My question is vague, and now I understand it from  
[2] a your answer. Have you ever taken any courses  
[3] that relate to consumer research or, you know,  
[4] research of a population as opposed to you going to  
[5] the library?

[6] A: Oh, survey work?

[7] Q: It could be survey. It could be other kind  
[8] of research, but in the nature of research on a  
[9] population or consumer base.

[10] A: I don't recall a course in which that was  
[11] the title of the work, but obviously -- Let me just  
[12] say that in the context of doing work on political  
[13] science and understanding opinion, there is a good  
[14] deal of exposure to opinion research, surveys. In  
[15] economics in any macro sense, there's an analysis  
[16] of data, public data, population data, economic  
[17] data. So with that answer, I would say exposed to  
[18] but not a course that has that in its title.

[19] Q: Okay. That exposure would be in connection  
[20] with political science courses?

[21] A: Yes.

[22] Q: Let me turn your attention to Exhibit 2.  
[23] which is your expert report.

[24] A: Yes.

[25] Q: Okay. If you could just describe for me

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[1] you would classify as a business course or  
[2] accounting course?

[3] A: I have taken accounting, and I'm trying to  
[4] remember in what context I did. I'm sorry. I  
[5] don't. I don't know if it was at the University of  
[6] Michigan or whether it was part of a law school  
[7] presentation. I'm just not remembering at this  
[8] point, but I've had exposure to the basics of  
[9] accounting.

[10] Q: In any of your coursework at the University  
[11] of Michigan or University of Maine, did you ever  
[12] take any courses in marketing, in consumer  
[13] research?

[14] A: Those titles just are not helpful to me in  
[15] terms of triggering my memory. I never took a  
[16] course in marketing, but I've had many courses in  
[17] research.

[18] Q: What courses have you had in research?

[19] A: Well, I studied political science in  
[20] college, and that is a course in which a good deal  
[21] of paper writing and research is required,  
[22] demanded, and taught. In law school, there is --

[23] Q: Well, let me ask --

[24] A: -- emphasis on research techniques.

[25] Q: Sure. Let me ask the question another way.

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[1] the process you went through in drafting this  
[2] report, first of all.

[3] A: Mechanically?

[4] Q: Well, I'm not asking how you sat down, you  
[5] know, at the computer to do it. But did you start  
[6] with an outline, for example?

[7] A: Oh, I did a lot of reading. I have a habit  
[8] of using sticky notes and writing on the documents  
[9] in question, which I did. Then I did an outline,  
[10] yes, and at the same time began compiling the  
[11] document that is what I call the spreadsheet, which  
[12] is a list of some but not all of the documents, and  
[13] then started writing from that set of raw  
[14] materials.

[15] Q: Other than sharing your outline with the  
[16] persons that you mentioned at the meeting in  
[17] Chicago --

[18] A: Yes.

[19] Q: -- where Mr. Armstrong and Ms. TerKeurst  
[20] were present, did you provide a copy of the report  
[21] or drafts of the report for review by anyone?

[22] A: Yes.

[23] Q: And to whom?

[24] A: Matt Armstrong.

[25] Q: Anyone else?

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[1] A: No.  
[2] Q: When did you complete the expert report,  
[3] Exhibit 2, in the form that we have here?  
[4] A: Right around the time of the date of this  
[5] report.  
[6] Q: October 23rd, 2001?  
[7] A: Right.  
[8] Q: How many drafts did you go through?  
[9] A: Two.  
[10] Q: Okay. Just looking at the structure of the  
[11] report, you have some introductory comments on  
[12] pages 1 and 2, correct?  
[13] A: Uh-huh.  
[14] Q: Then you have discussion about your  
[15] background and qualifications --  
[16] A: Yes.  
[17] Q: -- right? And that's paragraphs 1 through  
[18] 2?  
[19] A: Uh-huh.  
[20] Q: Then we have summary of opinion which takes  
[21] up paragraphs 3 through 8; is that right?  
[22] A: Yes.  
[23] Q: If you could explain to me what the summary  
[24] of opinion was intended to set forth as compared to  
[25] the following paragraphs.

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[1] A: The summary is the general, and the  
[2] following is the more specific.  
[3] Q: The summary is as the title suggests, a  
[4] summary, and then the following paragraphs are  
[5] development of those opinions?  
[6] A: Yes, a discussion of more of the specific  
[7] chronological factual developments that informed my  
[8] generic statements.  
[9] Q: All right. So would it be fair to say that  
[10] the paragraphs after -- from nine on are the  
[11] supporting information behind your summary of  
[12] opinions?  
[13] A: Yes.  
[14] Q: Help me define the time period that you're  
[15] basing your opinions in this case on. We talked  
[16] about the date of divestiture, and I believe you  
[17] told me January 1984, correct?  
[18] A: Uh-huh, yes.  
[19] Q: And obviously we're year 2001. Is it your  
[20] opinion that the claims in this case and AT&T and  
[21] Lucent Technologies' conduct covered that entire  
[22] period of time, or is your focus on some more  
[23] limited period of time?  
[24] A: The focus of the documents and my opinions  
[25] begin in late 1983 with the FCC order about the

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[1] transition with regard to telephone equipment. And  
[2] the bulk of my work was to look at documents from  
[3] late 1983 through 1996, but I also looked at and  
[4] reviewed materials for the 1997, 8, 9, 2000 period,  
[5] but less so with the later years than the earlier  
[6] years.  
[7] Q: Do you have any opinion as to whether AT&T  
[8] or Lucent Technologies engaged in any improper  
[9] conduct prior to 1986?  
[10] A: Do you want to define the term improper?  
[11] Q: Let me just change the term. I'm trying to  
[12] find something that encompasses the various  
[13] statements that you make. In your report you talk  
[14] about actions being unconscionable, other actions  
[15] being unfair or unreasonable. Using that  
[16] terminology, do you have an opinion as to whether  
[17] AT&T or Lucent engaged in any of that conduct that  
[18] you would characterize in that way prior to 1986?  
[19] A: I can find and describe numerous  
[20] shortcomings in AT&T's conduct in the time period  
[21] late '83 until sometime in 1986. But I reserve my  
[22] strongest concerns and criticisms for conduct that  
[23] began with the repricing and the communications  
[24] with customers after January 1, 1986.  
[25] Q: And why is that?

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[1] A: I'm -- As I described here, there was a  
[2] time during this period, '84 and '85, in which  
[3] there was some degree of potential oversight by the  
[4] FCC. There had been an order in which AT&T  
[5] obtained these customers in the manner in which the  
[6] FCC described it or issued it in their order. And  
[7] while I believe that the communications were  
[8] insufficient and inadequate, the fact is the  
[9] company was certainly totally responsible for all  
[10] aspects of its conduct at the end of that period  
[11] and perhaps a bit less so but not still totally for  
[12] the two years prior to that period.  
[13] Q: So it would be your position that you can  
[14] find fault with AT&T's conduct before 1986 --  
[15] A: Uh-huh.  
[16] Q: -- but less fault because of the FCC  
[17] oversight during that period?  
[18] A: It is more arguable.  
[19] Q: What do you mean by that?  
[20] A: That -- Well, no. Let me finish. It is  
[21] more arguable that FCC -- that the AT&T activities  
[22] were under color of some sort of approval of the  
[23] FCC in that time period. I myself find the conduct  
[24] insufficient, the communications totally  
[25] inadequate, and the lack of education fairly



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[1] appalling. But be that as it may, I think we have  
[2] the fact of the matter here, which is that the FCC  
[3] had issued that order. And so I focused primarily  
[4] on the time period in which AT&T had the ability  
[5] and the obligation totally on its own with respect  
[6] to its interactions with these consumers beginning  
[7] in 1986.

[8] Q: When you say that from 1984 to 1985 AT&T's  
[9] actions were under the color of some kind of  
[10] approval --

[11] A: Arguably under the color.

[12] Q: Well, then let me correct that. -- arguably  
[13] under the color of some kind of approval by the  
[14] FCC, what do you mean?

[15] A: I'm speaking of the order that the FCC  
[16] issued in November that described, you know, what  
[17] would happen with everybody who had a telephone in  
[18] their home as of the time that order was issued.

[19] Q: Are you talking about an order in late  
[20] 1983?

[21] A: Right, the one in November as I recall, in  
[22] which the 599 filings by AT&T finally got accepted  
[23] as the way the transition would occur, and I use  
[24] that term in quotes because I don't remember the  
[25] exact number of the amended filing, but there had

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[1] been many. And in that order, the FCC described  
[2] what in fact happened, which is that AT&T had to  
[3] communicate or the phone companies had to  
[4] communicate with this brochure that went out in  
[5] December of 1983, I believe, and that people had  
[6] the right to buy their phone for two years. And  
[7] after that, if they did nothing, they would remain  
[8] lease customers of AT&T.

[9] Q: And you believe that was improper?

[10] A: I didn't say the order was improper. I  
[11] said AT&T's conduct was improper.

[12] Q: Let me go back to your mention about if the  
[13] customers didn't respond, they would remain  
[14] customers of AT&T.

[15] A: Right.

[16] Q: Do you believe that was improper?

[17] A: Oh, I could easily argue a different  
[18] approach to the matter, but that isn't my role then  
[19] or here. So we have to deal with what actually  
[20] happened.

[21] Q: All right.

[22] A: And that was the order.

[23] Q: That was the order. And my question is:  
[24] Do you believe that was improper?

[25] A: It wasn't against the law. I don't think

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[1] it was the best of the various alternatives that I  
[2] now can sit here with hindsight and look back on,  
[3] but again, I haven't spent a lot of time on that  
[4] issue, because it wasn't the one before us now.

[5] Q: But as far as the process that you've just  
[6] described where customers, if they didn't respond,  
[7] would be treated as AT&T customers, you would do  
[8] that differently?

[9] A: Yes.

[10] Q: When you mentioned AT&T acting arguably  
[11] under the color of some kind of approval by the FCC  
[12] and I asked you to explain, you mentioned a  
[13] November 1983 or late 1983 FCC order.

[14] A: Yes.

[15] Q: Are there any other FCC orders or orders of  
[16] any kind that you include when you talk about under  
[17] color of some kind of approval?

[18] A: That is the only order that I am aware of  
[19] that described in any detail what exactly was  
[20] supposed to occur with regard to telephone sets  
[21] and -- and -- and AT&T's ultimate acquisition of  
[22] this customer class.

[23] Q: So that's what you're referring to?

[24] A: Yes.

[25] Q: You also made reference to numerous

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[1] filings, many, many filings by AT&T. Do you recall  
[2] that testimony?

[3] A: I believe so, yes.

[4] Q: I might not -- I apologize if I didn't get  
[5] the words just right.

[6] A: I think I said 599, but that's not correct.

[7] Q: Do you know if there were many filings by  
[8] other parties and interveners in that Computer  
[9] Inquiry II matter?

[10] A: I'm sure there were, but I did not consult  
[11] the record in that proceeding to look at all of  
[12] those filings. The reason why I'm aware there's so  
[13] many by AT&T is that your files make reference to  
[14] some of the chronology here and the documents that  
[15] AT&T filed, and the order itself describes the  
[16] procedural history and the variety of filings that  
[17] had occurred.

[18] Q: So you're not faulting AT&T for making  
[19] filings with the FCC?

[20] A: No. I was trying to describe the  
[21] general -- the volatility of the situation in which  
[22] it was not clear until the very last moment in 1983  
[23] as to exactly what plan would be proffered as  
[24] acceptable by AT&T and then accepted by the FCC.  
[25] That is my only reason for describing the variety

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111 of filings involved.  
121 Q: And I believe that you told us previously  
131 you weren't involved in any of those proceedings.  
141 A: That's correct. I was not.  
151 Q: What do you mean by volatility of the  
161 situation?  
171 A: It appears that there were numerous  
181 revisions and alternatives being debated and  
191 described about what would happen with all of the  
201 customers who had telephones in their homes and who  
211 were paying for them on their local phone bill.  
221 Q: What would account for that?  
231 A: What would account for the volatility?  
241 Q: No. Let me ask, I guess, a little cleaner  
251 on the record. You said there were numerous  
261 revisions and alternatives being debated. That was  
271 your description of what you were intending by  
281 volatility?  
291 A: Yes.  
301 Q: Based on your experience working with  
311 utilities and PUCs, what would account for that,  
321 there being numerous revisions and alternatives?  
331 A: I believe that the divestiture lawsuit,  
341 which was undergoing -- which was being finalized  
351 and revised -- and resolved at the same time the

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111 FCC was conducting this second Computer Inquiry to  
121 move to competition for telephone sets, was all  
131 happening at the same time. And it is my  
141 impression that it was not exactly clear until very  
151 late in 1983 how all of those things would mesh  
161 together and what exactly would be done in the  
171 nature of the -- what we now in the electric area  
181 would call the default service provider of these  
191 telephones would turn out to be and under what  
201 conditions they would have them. The price  
211 protection plan -- I put it in quotes -- was a very  
221 late proposal by AT&T to respond to a good deal of  
231 controversy about what would happen to those who  
241 choose not to choose and do nothing.  
251 Q: Why do you put price protection plan in  
261 quotes?  
271 A: Because I believe I'm using a term that is  
281 the term that AT&T used or that the FCC used in its  
291 order and that provided some, you know, promises  
301 with respect to not raising prices during that time  
311 period.  
321 Q: You're trying to refer to whatever was the  
331 language in the FCC order?  
341 A: That's correct.  
351 Q: We started down this road as I was trying

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111 to get some definition on time period that you're  
121 basing your report on. If I understand, you  
131 reviewed materials and tried to understand the  
141 background from the period '83 up to, say, 2000; is  
151 that fair?  
161 A: That's fair, yes.  
171 Q: Now what I want to ask: As far as your  
181 opinions as to whether AT&T or Lucent acted  
191 unconscionably or engaged in unfair practices, is  
201 it your position that they did so prior to 1986?  
211 A: I believe that we're now talking about  
221 something that I've addressed specifically in my  
231 expert report. Do you mind if I --  
241 Q: Feel free.  
251 A: -- point you to the language here, because  
261 I think I can answer that question. Paragraph 18.  
271 Q: Okay.  
281 A: In which I describe the 1986 price  
291 increase, the fact that consumers were paying far  
301 more than the value of the phone they could have  
311 purchased and the -- It was at this time -- and I'm  
321 in the middle of paragraph 18 -- when AT&T  
331 increased rates for embedded-base residential  
341 customers of Big Six telephone sets that AT&T's  
351 conduct became unfair and the prices were

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111 unconscionable in my opinion.  
121 Q: So in your opinion prices became unfair and  
131 unconscionable in 1986?  
141 A: That's correct.  
151 Q: All right. Do you have an opinion as to  
161 whether they were unfair or unconscionable prior to  
171 1986?  
181 A: Well, prior to that, their traditional  
191 rotary desk phone customer was paying a dollar 50 a  
201 month. That price had been approved by the FCC,  
211 and it is not -- I would have no basis not knowing  
221 the value of the phone set or being one to provide  
231 you with the economics of that dollar 50, I would  
241 have no basis for criticizing that.  
251 Q: All right. So your opinions -- Well,  
261 strike that. So it isn't your opinion that prices  
271 prior to 1986 were unfair or unconscionable?  
281 A: That is not my opinion.  
291 Q: Okay. What about with regard to AT&T  
301 practices that you discuss in your opinion? And I  
311 believe you focus on marketing, billing, other  
321 practices as to customers.  
331 A: Yes.  
341 Q: Do you have an opinion as to whether those  
351 practices were -- I'm going back to your language,

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[1] if I can find it here -- unfair or misleading  
[2] prior --  
[3] A: Where are you, please?  
[4] Q: I'm looking just at your language --  
[5] A: Yes.  
[6] Q: -- on page 3, paragraph 3.  
[7] A: Uh-huh.  
[8] Q: When you -- The sentence beginning, In the  
[9] attempt to retain consumer lease customers, AT&T  
[10] used unfair and misleading practices.  
[11] A: Yes.  
[12] Q: Is it your opinion that AT&T engaged in  
[13] unfair or misleading practices of the kind that you  
[14] describe here prior to 1986?  
[15] A: Well, as I said before, the disclosures  
[16] were completely inadequate, and it made it possible  
[17] for the unfairness to be continued in spades; but  
[18] the bulk of this proceeding here is about people  
[19] who became your customers by default on January 1,  
[20] 1986, and it is those actions that -- that I  
[21] certainly focused on in my review.  
[22] Q: All right. In looking over your paragraph  
[23] 8 of your opinion.  
[24] A: Eight?  
[25] Q: Yes. Which is the last paragraph of the

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[1] summary. I'm just trying to get some definition on  
[2] time periods.  
[3] A: Sure.  
[4] Q: You state, Finally, it should be clear that  
[5] my concerns relate to the transactions between AT&T  
[6] and residential customers concerning the  
[7] embedded-base telephone sets that were transferred  
[8] to AT&T in 1984 and who then remained with AT&T as  
[9] a lease -- as lease customers starting in 1986, the  
[10] end of the transition period. What do you mean by  
[11] that?  
[12] A: Well, the key point is the next sentence.  
[13] These --  
[14] Q: Go ahead.  
[15] A: You know, these embedded-base phone,  
[16] embedded-base customers -- The term has been used  
[17] interchangeably. I'm afraid perhaps that's the  
[18] source of confusion. We're not talking about  
[19] people who after 1986 called up AT&T and asked to  
[20] become a leasing customer of the company. We're  
[21] talking about people who became AT&T's customer by  
[22] virtue of this negative option.  
[23] Q: Right. So you're not including within your  
[24] criticisms or as a basis for your opinions  
[25] customers who were new leasers, let's say, after

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[1] 1986?  
[2] A: That's correct.  
[3] Q: And do you find that AT&T is guilty of  
[4] engaging in unfair practices prior to 1986?  
[5] A: I did not provide you with a conclusionary  
[6] statement about that, but I believe I told you in  
[7] my opinion that a lot of AT&T's conduct was  
[8] unreasonable in the sense of the communication, the  
[9] lack of education, and the lack of disclosures  
[10] these customers had. But I did not make a specific  
[11] opinion in this report on that finding.  
[12] Q: Okay. And that's what I'm trying to  
[13] clarify. Whether or not it's stated in this  
[14] report, do you have an opinion as to whether or not  
[15] AT&T's practices either with pricing or customers'  
[16] communications or billing were unfair -- go back  
[17] over again and reference your language -- unfair or  
[18] misleading during that period from 1984 to 1985?  
[19] A: Oh, yes, I do have a personal opinion about  
[20] that.  
[21] Q: Well --  
[22] A: I think I've hinted at what it is.  
[23] Q: And I want to make sure that whatever  
[24] opinions we're talking about here are opinions that  
[25] you're relying on for your testimony here today.

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[1] Do you have an opinion as to that with regard to  
[2] your offer as an expert witness and potential  
[3] testimony in this case?  
[4] A: My potential testimony in this case is in  
[5] this report. You now asked me if I also have  
[6] additional views about my own review of this that  
[7] is not part of this report.  
[8] Q: All right. So let me just clarify where --  
[9] A: I'll be happy to discuss those issues if  
[10] you'd like, but I didn't think --  
[11] Q: We'll get to it.  
[12] A: -- that's what we're here to do.  
[13] Q: What we're trying to do is clarify where  
[14] you are with this.  
[15] A: Right.  
[16] Q: If I understand what you're telling me, you  
[17] do not submit an opinion or propose to testify in  
[18] this case that AT&T acted unfairly or in a  
[19] misleading way with regard to its practices in 1984  
[20] and 1985?  
[21] A: I have got criticisms in this report with  
[22] respect to the communications that AT&T provided  
[23] its customers in the mailing that went out in  
[24] December of 1983, in the subsequent educational  
[25] materials that did or did not occur in the '84, '85



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[1] time period, and they were inadequate and not  
[2] sufficient and made it possible for a lot of the  
[3] more specific unfair billing and interactions that  
[4] occurred starting in 1986 to have happened. It was  
[5] all part of a chain of events. But if you want to  
[6] just isolate '84 and '85, the issues that we're  
[7] talking about are in this report because they form  
[8] a predicate for what started to occur in 1986.  
[9] It's important background information. It  
[10] happened. I've criticized it. It made it possible  
[11] in part for AT&T to do what it did starting in  
[12] 1986.

[13] Q: Okay.

[14] A: But that in and of itself is not the focus  
[15] of this investigation or my conclusionary  
[16] statements.

[17] Q: All right. So let me ask a final question  
[18] to --

[19] A: Okay.

[20] Q: -- wrap up on that. If we were looking at  
[21] events as of January 1, 1986, would it be your  
[22] opinion that AT&T had engaged in unfair or  
[23] misleading practices of the kind that you've  
[24] described here?

[25] A: I can't answer that, because we're not

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[1] dealing with a set of activities that have a  
[2] beginning and end on January 1 of '86. I've  
[3] discussed pre-1986 activities here. I've  
[4] criticized activities by the company in that time  
[5] period. But the point of this testimony is to look  
[6] at the conduct over a period of time, and that is  
[7] what my conclusions are about.

[8] Q: And I understand that that's what's set  
[9] forth here in your report. But you're aware of  
[10] events up to 1986; you've reviewed documents and  
[11] you've assessed facts that occurred up to the point  
[12] of January 1986, have you not?

[13] A: Yes.

[14] Q: Okay. So I'm asking if stepping at that  
[15] point, January 1, 1986, you have an opinion as to  
[16] whether conduct that occurred up to that point was  
[17] unconscionable or unfair or misleading.

[18] MR. MARKER: Before you answer, I think  
[19] that's been asked and answered at least five times  
[20] now. If you want to keep asking the same  
[21] questions, she'll keep answering the same way. I  
[22] presume. I let it go a lot of times, and that's  
[23] what I want to point out that's what we're talking  
[24] about.

[25] Q: I disagree. I don't think we've gotten an

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[1] answer to that question. I'm simply trying to  
[2] determine if you can give me an answer as to that  
[3] point in time.

[4] A: I have criticized in here numerous acts or  
[5] lack thereof by AT&T during that time period. The  
[6] focus of my statement about prices occurred after  
[7] January 1, 1986. The focus of your question asks  
[8] me to focus on disclosures and communications, and  
[9] on that, I'm not going to defer to 1986. I'm going  
[10] to point you to the criticisms that I've made here  
[11] about those disclosures and those actions in that  
[12] time period. But they don't include the prices.

[13] Q: Okay. So let's take the prices out of the  
[14] mix --

[15] A: Okay.

[16] Q: -- and focus on the disclosures and  
[17] communications --

[18] A: Okay.

[19] Q: -- that you've just referenced. Just  
[20] focusing on those and your criticisms of those --

[21] A: Right.

[22] Q: -- do you have an opinion as to whether  
[23] those actions were unfair or misleading as of  
[24] January 1986?

[25] MR. MARKER: I want the same objection to

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[1] continue, okay?

[2] Q: That's fine. You may answer.

[3] A: The reason why we are talking about those  
[4] actions are that we have to put them in the context  
[5] of what happened after January 1, 1986. So while  
[6] as a matter of -- of history and importance to  
[7] understand the post-'86 era, I have showed you and  
[8] I have in here criticisms of the communications and  
[9] the lack of education by AT&T during that time  
[10] period. If at the end of that time period all  
[11] those phones had gone somewhere else besides AT&T  
[12] and we did not, then, have ten years of attempting  
[13] to keep those customers by any way that the company  
[14] could organize itself to do it, then we wouldn't be  
[15] here in this room. It's the continuum of events  
[16] that is important to me and ought to be important  
[17] to my report.

[18] Q: Well, I'm still going to go back and try to  
[19] get an answer to my question. I understand what  
[20] you say in your report. I'm trying to determine  
[21] based on the criticisms that you have identified  
[22] for the period '84 and '85 whether based upon those  
[23] it's your opinion that in those two years AT&T's  
[24] conduct rose to the level of being unfair or  
[25] misleading practices.

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[1] MR. MARKER: I have a continuing objection.  
[2] Barbara, if you have any different answer than what  
[3] appears to me to be the same question, I guess you  
[4] can give it.  
[5] A: I don't.  
[6] Q: So you're not able to provide me any  
[7] further answer on that?  
[8] A: I cannot.  
[9] MR. BONACORSI: Let's break for lunch.  
[10] MS. BAKEWELL: Yeah.  
[11] THE WITNESS: 12:15 is good.  
[12] MR. MARKER: Be back at 1:15?  
[13] MR. BONACORSI: 1:15.  
[14] (Lunch recess was held.)  
[15] (Exit Mr. Armstrong.)  
[16] Q: (By Ms. Bakewell) I want to go back and  
[17] just fill in a hole. My own fault for leaving the  
[18] hole, from this morning, Ms. Alexander. I asked  
[19] you early on if you'd ever been deposed before, and  
[20] I think you told me yes.  
[21] A: Yes.  
[22] Q: And I said we'd come back to that. So let  
[23] me ask you whether you have ever given deposition  
[24] testimony in a civil lawsuit.  
[25] A: I'll tell you the -- I think the answer to

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[1] of paper. Exhibit 2, page 5. Yes.  
[2] Q: Is that the case were referring to?  
[3] A: Oh, no, no.  
[4] Q: Okay.  
[5] A: This was a regulatory activity brought on  
[6] my part, and I was not personally involved in that  
[7] lawsuit. That was a regulatory proceeding that was  
[8] appealed in the normal course.  
[9] Q: Other than that case, have you ever had  
[10] your deposition taken?  
[11] A: No.  
[12] Q: Have you ever testified in any context  
[13] before a public utility or any other forum on  
[14] behalf of a private company or utility?  
[15] A: No.  
[16] Q: And you outlined for me this morning a  
[17] number of positions that you held with businesses.  
[18] I'll call them that for lack of a better word. You  
[19] listed the senate, various environmental  
[20] organizations.  
[21] A: Yes.  
[22] Q: Have you ever held employment with private  
[23] for-profit company?  
[24] A: Other than my own consulting business?  
[25] Q: Yes.

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[1] that is no.  
[2] Q: Okay.  
[3] A: I have never been an expert witness in  
[4] civil litigation. The deposition that I was  
[5] referring to was one in which I was the defendant  
[6] in a lawsuit filed by a disgruntled creditor  
[7] against the office and me personally for yanking  
[8] his license and voiding all the loans he had issued  
[9] pursuant to the Main Consumer Credit Code. And I  
[10] was -- My deposition was taken in that course of  
[11] that litigation. It was eventually dismissed.  
[12] Q: Okay.  
[13] A: And defended by the State of Maine,  
[14] Attorney General's office.  
[15] Q: Was that litigation that occurred when you  
[16] were in the position you described this morning --  
[17] A: Yes. The Main Consumer Credit Code  
[18] administrator.  
[19] Q: Do you recall the name of the case?  
[20] A: I'm sorry. I haven't thought of that in  
[21] years. No, I don't actually.  
[22] Q: And I'll just direct you to Exhibit 2, page  
[23] 5. There's a footnote there. I don't know that  
[24] that's the --  
[25] A: I'm sorry. I'm looking at the wrong piece

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[1] A: Which is definitely for profit.  
[2] Q: Okay. We'll exclude that one.  
[3] MR. MARKER: And excluding the waitressing  
[4] jobs.  
[5] Q: Let me go back so I have a clean question.  
[6] Other than employment during school such as  
[7] waitressing and other than your current personal  
[8] consulting business, have you ever held employment  
[9] with a private for-profit company?  
[10] A: I cannot recall one, no. I have no  
[11] recollection of doing that.  
[12] Q: We talked this morning about some of your  
[13] communications with Charlotte TerKeurst including a  
[14] meeting earlier this year in Chicago. Do you  
[15] recall that?  
[16] A: Uh-huh.  
[17] Q: Was that the only face-to-face meeting you  
[18] had with Ms. TerKeurst?  
[19] A: No. There was one other that occurred  
[20] early on in June at which Matt invited both -- Matt  
[21] Armstrong here in the law firm -- invited both  
[22] Charlotte and I to attend a meeting here, at which  
[23] there was an explanation of the case, the  
[24] procedural posture, the scope of the discovery, a  
[25] summary of the status of the depositions, an

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11 introduction to the boxes which then were sent,  
12 presumably to her and certainly to me, of the  
13 substantive materials. It was basically a way to  
14 transmit an overview of the case as it existed at  
15 that point.

16 Q: And did that meeting take place before the  
17 other one that you've identified?

18 A: Yes, it did.

19 Q: Okay. Have you seen Ms. TerKeurst's final  
20 expert report in the case?

21 A: No, I haven't.

22 Q: Was there any discussion between you and  
23 Ms. TerKeurst or in any of your other  
24 communications with her or the law firm about how  
25 you would divide issues or distinguish those areas  
26 that you're going to give opinions on?

27 A: In the generic sense that it was clear that  
28 we were both looking at the same materials and both  
29 providing a consumer's perspective.

30 MR. MARKER: Do you need to hear the  
31 question again, Barbara?

32 A: Well, I'm just thinking. I'm trying to  
33 recall whether there was any -- There was no  
34 substantive discussion -- There was no substantive  
35 distinction in the matters we were looking at, you

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36 know, no indication that this was one person's  
37 issue and not the other one's. There was never any  
38 aspect of that.

39 Q: All right. Is that true up until today?

40 A: Up until today?

41 Q: Well, I believe you were talking about when  
42 you were framing the issues that there was no  
43 substantive distinction --

44 A: Right.

45 Q: -- she would take these and you would take  
46 these.

47 A: Exactly.

48 Q: Was there ever a point where that changed  
49 and there was some division --

50 A: No.

51 Q: -- between the two of you?

52 A: No, no, not to my knowledge.

53 Q: So my understanding is you both were  
54 addressing the same knowledge?

55 A: Yes.

56 Q: When you say that you're providing the  
57 consumer's perspective, is that the perspective you  
58 described before as a consumer advocate?

59 A: A consumer protection specialist.

60 Q: Do you consider yourself a consumer

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61 advocate?

62 A: I often provide my specialty in an  
63 adversarial forum, because I provide testimony  
64 before commissions on behalf of public advocates  
65 and consumer organizations, but I am an expert in  
66 my field, I believe. And my approach is -- Or my  
67 expertise lends itself to the description consumer  
68 advocate, but in my opinion it's more in the nature  
69 of a specialty.

70 Q: So do you consider yourself a consumer  
71 advocate?

72 A: What I would prefer to do is consider  
73 myself a specialist on consumer protection, service  
74 quality, and low-income issues. And that is the  
75 way I present myself. The organizations for which  
76 I work call themselves consumer advocates.

77 Q: All right. So you provide information for  
78 advocate groups?

79 A: I have certainly done that, as well as for  
80 commissions and regulatory agencies and federal  
81 government agencies.

82 Q: Okay. I want to go back where we were  
83 right before lunch. We were talking about time  
84 periods and trying to get some definition there.  
85 Certainly I don't want to put any words in my

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86 mouth, and if I'm not stating it the way you're  
87 comfortable with, feel free to stop me. As I  
88 understand it, the way we left it is that you were  
89 not taking the position that at least pricing was  
90 unconscionable at least before 1986; is that fair?

91 A: Yes.

92 Q: And that you were not able to say that  
93 marketing, billing, other practices aside from  
94 pricing were unfair or misleading in isolation;  
95 that is, without -- Strike that. You're not able  
96 to say that those practices were unfair or  
97 misleading only up to the point of 1986, but you  
98 feel you have to look at it as a continuum from '83  
99 on?

100 MR. MARKER: I object on two grounds. One  
101 is that it mischaracterizes her prior testimony,  
102 and two, that it's been asked and answered.  
103 Subject to that, you can answer.

104 A: I feel like we went through this a couple  
105 times this morning, and I'm comfortable with the  
106 answers I gave this morning. I'm not sure I can  
107 give you anything else.

108 Q: That's fine. I'm just trying to set a  
109 foundation for us talking a little further about  
110 your criticisms. But as far as time period, I



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[1] believe I understood you to say it can't be looked  
[2] at in isolation; you're assessing it as a  
[3] continuum; is that fair?  
[4] A: That's fair.  
[5] Q: And I also heard you say before we broke  
[6] that you had a personal opinion, however, as far as  
[7] that earlier time frame. Do you recall that  
[8] testimony?  
[9] A: Yes.  
[10] Q: What is your personal opinion?  
[11] MR. MARKER: I'll -- May I just have a  
[12] continuing objection that it's been asked and  
[13] answered?  
[14] Q: Actually the personal opinion we didn't get  
[15] into, but go ahead.  
[16] A: The disclosures were inadequate, and  
[17] because they were inadequate, it was the -- in this  
[18] time period we find the seeds for the continuum  
[19] that one presumes is the subject of our ongoing  
[20] discovery and discussion here of the period that  
[21] starts in 1986. So the disclosures were  
[22] inadequate. In and of the ones that were made  
[23] inadequate, they were insufficient. There were not  
[24] enough of them. And I certainly don't think that  
[25] the notion of handing all of these customers to

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[1] AT&T on January 1 of '86 was such a good idea, but  
[2] that's easy for me to say now looking backwards.  
[3] And I can point you to analogous situations  
[4] being debated by many states as they're going  
[5] toward electric and natural gas competition in  
[6] particular in which some of the concerns that I  
[7] have about what happened in '84 to '86 and beyond  
[8] in this case are being used by the states as ways  
[9] to do things differently as we move toward  
[10] competition in electricity, for example.  
[11] Q: And when you say that it's your opinion,  
[12] your personal opinion, that the disclosures were  
[13] inadequate, just so we're clear on the record,  
[14] we're talking about the disclosures that occurred  
[15] from the end of '83 through 1985?  
[16] A: Right. And many of those concerns are  
[17] described in my report. With respect to the  
[18] mailing in December of '83, I've discussed that in  
[19] some detail. The pricing for presentation, the  
[20] nature of disclosures, the advertisements, the  
[21] information that was provided in bill inserts for  
[22] local phone companies as well as AT&T, all of those  
[23] created a -- an environment in which the post-'85  
[24] activities took place.  
[25] Q: Do you hold the FCC responsible at all for

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[1] the abuses or the conduct that you're pointing to  
[2] in your report?  
[3] MR. MARKER: Wait a second. I object to it  
[4] as being beyond the scope of the matters on which  
[5] she's been asked to testify. Subject to that, you  
[6] can answer.  
[7] A: I certainly feel that the FCC could have  
[8] done some additional oversight, could have mandated  
[9] additional approaches, could have monitored AT&T's  
[10] conduct differently or more thoroughly than in fact  
[11] occurred. The agency was obviously breaking ground  
[12] with respect to the move to competition in these  
[13] areas, did not have any significant expertise with  
[14] respect to consumer protection laws that are  
[15] applicable to competitive businesses, had never  
[16] been called on to make any decisions about matters  
[17] of this nature in the past; and I believe it relied  
[18] on the tools with which it was familiar and was  
[19] operating in an era where there was significant and  
[20] tremendous industry changes happening, some of  
[21] which, you know, they just were not in charge of as  
[22] it were in terms of the modified final judgment and  
[23] the lawsuit and so forth.  
[24] So in that sense I can point to things  
[25] that -- again, with hindsight -- that might have

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[1] been done differently or better than they were done  
[2] then.  
[3] Q: Do you know specifically what, if anything,  
[4] the FCC did do between 1986 and the present  
[5] related -- I should say 1990 -- 1986 to 1995,  
[6] because I want to exclude the proceedings that you  
[7] talk about in your report for the moment. We'll  
[8] talk about those. Do you know between 1986 and the  
[9] time that those proceedings began, what, if  
[10] anything, the FCC did in relation to AT&T's  
[11] provision of the lease service?  
[12] A: I'm sorry. What time period are we talking  
[13] about? '84 and '85, no. I misunderstand.  
[14] Q: Let me just go back and clarify it for you.  
[15] A: Right.  
[16] Q: Looking at the period from 1986 --  
[17] A: 1986.  
[18] Q: -- after the transition period ended --  
[19] A: Right.  
[20] Q: -- up to the time that proceedings began  
[21] in 1995 that you mention in your report, are you  
[22] aware of what, if any, actions or overview the FCC  
[23] undertook with regard to AT&T's leasing business?  
[24] A: I did not conduct any independent review of  
[25] FCC activities. I relied on the records as

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11) provided through AT&T about the conduct of its  
12) business during this time period, and at no point  
13) did I see any indication of any interaction,  
14) oversight, or review going on of AT&T's consumer  
15) leasing business by the FCC.  
16) Q: When you say you relied on the records  
17) provided by AT&T, are you referring to the produced  
18) documents that were provided to you by Carr Korein?  
19) A: Yes.  
20) Q: Let's look back at your report, Exhibit 2,  
21) and I want to focus for a minute on the section  
22) summary of opinion and try to get out on the table  
23) what your overall opinions are; and then we'll go  
24) back through each one of those and the support you  
25) have for each one of those. In paragraph 3, the  
first general opinion that I see -- and again,  
please correct me if I'm overlooking something  
here -- has to do with pricing of embedded-base  
telephone sets; is that correct?  
A: Yes.  
Q: What is your opinion with regard to the  
prices of embedded-base telephone sets?  
A: I provided my opinion right here. Do you  
want me to read this back to you, or are you asking  
me a question about something specific?

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11) Q: Sure. And certainly you can reference a  
12) particular statement in here. But paragraph 3 is  
13) fairly long. What I want to focus on is: What  
14) specifically is your opinion as to what AT&T did  
15) wrong regarding pricing of embedded-base telephone  
16) sets?  
17) A: I've stated that here.  
18) Q: So -- And can you point to me the specific  
19) statement that articulates that?  
20) A: Summary of opinion, paragraph 3, and then  
21) I'll read all of it to you, because I don't want to  
22) say there's one sentence here that is the total of  
23) my opinion. All of it is my opinion, and it all  
24) needs to be read together.  
25) Q: I understand that. What I'm looking for,  
though, because you title it summary of opinion, is  
whether you have a summary of what your opinion is  
with regard to the pricing.  
A: And I provided that summary right here.  
Q: Well, I'll just give you a statement and  
see if -- if you agree with that, and then we'll  
break it down that way. I'm trying to give you the  
opportunity to articulate it. Is it your opinion  
that AT&T's pricing of embedded-base telephone sets  
was exorbitant?

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11) MR. MARKER: Would you clarify during what  
12) time frame you intend to ask her about? Exorbitant  
13) at what time?  
14) Q: At any time.  
15) A: Well, again, I think we went through that  
16) this morning. I talked about the fact that the  
17) price change in 1986 is the onset of the period  
18) during which, in my opinion, the price charge was  
19) exorbitant.  
20) Q: Okay. We'll use that as our starting point  
21) there. You say here in paragraph 3 that, in my  
22) opinion, the consumer lease programs operated by  
23) AT&T, the company, resulted in exorbitant prices  
24) charged to embedded-base residential customers for  
25) Big Six telephone sets, correct?  
A: Yes.  
Q: Okay. What do you mean by embedded base?  
A: The next sentence tells you what I meant.  
By embedded base, I mean those customers who  
retained their telephone sets after the end of the  
transition period in 1986 and who then became lease  
customers of AT&T by default, period.  
Q: Is it your opinion that telephone sets  
leased between 1984 and 1985 were not embedded-base  
sets?

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11) A: Well, that's an interesting issue. I  
12) hadn't thought of that.  
13) Q: So my question.  
14) A: Well, I'll have to think about that.  
15) Q: Do you have an opinion about that?  
16) A: Well, I'll have to think about it.  
17) Q: Okay. So the answer would be no?  
18) A: No. The answer is I have to think about  
19) it.  
20) Q: Okay.  
21) A: And I would like to think about it. I do  
22) not recall seeing any information that would  
23) allow -- I'm trying to think how AT&T would have  
24) characterized that in its own records; as new  
25) inwards, perhaps. I'm thinking out loud. I'm  
not -- I do not know enough about the volume or  
activity of new customers who may have come into  
the system in that time period to give you a good  
answer to that. But -- And I would want to know  
how they were signed up, what they were told, what  
they were provided, and I never saw any indication  
of that information. And until I looked at that, I  
would not want to have an opinion about it.  
Q: Let me ask a different question. In your  
definition of embedded-base phones --



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[1] A: Right.  
[2] Q: -- would you include customers who were  
[3] leasing Big Six telephones -- Do you understand  
[4] what I mean when I say Big Six? Is that a term  
[5] you're familiar with from the review of the  
[6] documents?  
[7] A: Yes.  
[8] Q: So would you include within embedded base  
[9] customers who are leasing Big Six telephones as of  
[10] December 1983 and continued leasing with AT&T in  
[11] January '84?  
[12] A: It certainly includes that, yes.  
[13] Q: What do you mean when you say became  
[14] customers of AT&T by default?  
[15] A: They had been receiving telephone service  
[16] including their telephones from the local phone  
[17] company, and it was with the creation of the new  
[18] entity of AT&T Information Services that the phones  
[19] themselves, the telephone set equipment, the  
[20] leasing of it, was transferred from the local phone  
[21] company to AT&T. And the customer didn't have  
[22] anything to do with this transaction. It was an  
[23] automatic, if you do nothing, this is what will  
[24] happen transaction.  
[25] Q: You say here in paragraph 3, second

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[1] sentence. By embedded base I mean those customers  
[2] who retained their telephone sets after the end of  
[3] the transition period in 1986 and who then became  
[4] lease customers of AT&T by default.  
[5] A: Uh-huh.  
[6] Q: The thing I'm trying to determine is when  
[7] in your opinion did those customers become  
[8] customers by default. Was it in January '84, or  
[9] was it in 1986?  
[10] A: It is my understanding that they actually  
[11] became lease customers of AT&T in January of '84,  
[12] but the bill continued to come from the local phone  
[13] company. Evidently there was a separate page that  
[14] told them about their AT&T charges attached to that  
[15] bill. At some point in '85, AT&T started issuing  
[16] its own bills to these people, and they then did  
[17] not get a telephone equipment lease charges from  
[18] the local phone company.  
[19] But the point I think I'm trying to make  
[20] with this particular sentence is that there was a  
[21] time period during which they had the right to buy  
[22] the telephone set from AT&T at a regulated price,  
[23] and it was after the end of that period that we and  
[24] the FCC called the end of the transition period and  
[25] the sole relationship with the customer and was

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[1] between the customer and AT&T and that relationship  
[2] became unregulated. You know, the prices were no  
[3] longer regulated, the communications were no longer  
[4] regulated, at least directly or in any way by the  
[5] FCC. Obviously there was the potential for other.  
[6] Q: So when you say who then became lease  
[7] customers of AT&T by default --  
[8] A: Right.  
[9] Q: -- do you remember deferring to that point  
[10] in 1986 when the transition period was done?  
[11] A: I am.  
[12] Q: Even though they might have actually become  
[13] customers in January '84?  
[14] A: Yes, that's correct.  
[15] Q: You go on to say in paragraph 3 your basis  
[16] for believing that the rates charged after 1986  
[17] were exorbitant, and you mention that they were  
[18] exorbitant in relation to the value of the  
[19] telephone set and the relationship to the value of  
[20] the leasing service.  
[21] A: Yes.  
[22] Q: Do you see that? Is that your basis for  
[23] concluding that the rates are exorbitant, those two  
[24] grounds?  
[25] A: In terms of just price, yes.

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[1] Q: Okay. And then you go on to conclude that  
[2] the prices were, therefore, unconscionable in my  
[3] opinion, I believe is what you say in the next  
[4] sentence. Do you see that?  
[5] A: Yes.  
[6] Q: First of all, let me go back to when you  
[7] use the term exorbitant. What do you mean by that  
[8] word?  
[9] A: Very high in relationship to the value of  
[10] the product or services being acquired.  
[11] Q: Is that your definition or one that you  
[12] have obtained elsewhere?  
[13] A: Oh, no. That's my understanding of the  
[14] meaning of the word exorbitant.  
[15] Q: What's the basis for that understanding?  
[16] A: The English language. I didn't look it up  
[17] in the dictionary, but that's the meaning that I  
[18] have in mind when I use that term.  
[19] Q: That's the meaning you ascribe to it?  
[20] A: Yes.  
[21] Q: Is it a term that you have commonly used in  
[22] any of your other testimony or engagements for  
[23] either consumer advocacy groups or other clients?  
[24] A: I couldn't tell you. I mean, I just -- I  
[25] don't remember.

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[1] Q: Would you say it's a term that you have  
[2] commonly used?

[3] A: It's a term -- Exorbitant and  
[4] unconscionable are both terms that are used  
[5] prominently in consumer protection legislation,  
[6] law, articles, discussions in general, yes.

[7] Q: So a term you're familiar with based upon  
[8] those contexts?

[9] A: Yes.

[10] Q: What about a term that you personally have  
[11] used in any of your writings or communications?

[12] A: I'm not understanding your question. Do I  
[13] derive my meaning from the context of what I just  
[14] said, which is consumer protection law, regulation,  
[15] articles, discussion --

[16] Q: No.

[17] A: -- history -- No. That's not your  
[18] question. Try again.

[19] Q: My question is much more simple than that.  
[20] Is the term exorbitant one that you have used in  
[21] any of your other writings or engagements?

[22] A: I do not know the answer to that question.  
[23] I'm sorry. I don't have the mind or the capacity  
[24] to remember all of the writings and engagements and  
[25] articles I've written.

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[1] Q: So as you sit here today, you're not able  
[2] to tell me if it's a term you commonly use?

[3] MR. MARKER: You mean in the context you  
[4] just mentioned, in the context of her writings and  
[5] consulting work?

[6] Q: Sure.

[7] A: I would be surprised if I have not used  
[8] this term. But I am concerned that you will then  
[9] ask me when I have used it, and I can't tell you  
[10] exactly, because I don't keep in mind my vocabulary  
[11] that has appeared in all of the documents that are  
[12] listed in Exhibit 1.

[13] Q: I was but you covered that. You go on to  
[14] conclude that prices charged to customers were  
[15] unconscionable in my opinion. Do you see that  
[16] statement?

[17] A: Yes.

[18] Q: Why do you tack on in my opinion?

[19] A: I am an attorney. I'm also an expert  
[20] witness in the consumer protection field. It is  
[21] important for me to make sure that I am not trying  
[22] to provide legal argument in my documents and that  
[23] I understand that distinction. But it's hard to --  
[24] I mean, it's difficult sometimes to make those  
[25] distinctions, because I do have all of those things

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[1] sitting in my head.

[2] Q: Difficult to separate?

[3] A: Exactly. And unconscionable, as we all  
[4] well know, is a term that has got a long history in  
[5] consumer protection law, the UCC, you know, leasing  
[6] acts, articles, court opinions or whatever. So I'm  
[7] trying to make it clear here that I am using this  
[8] term in my consumer protection hat and not trying  
[9] to make a legal conclusion or argument with regard  
[10] to this particular document. But, of course, I'm  
[11] aware of those long lines of cases and that word  
[12] and it carries that weight with it, and I used it  
[13] deliberately for that reason.

[14] Q: So if I understand correctly, you added in  
[15] my opinion so that it would be clear you weren't  
[16] intending to state any of these as legal  
[17] conclusions?

[18] A: That's correct.

[19] Q: Okay. Nevertheless when we use the word  
[20] unconscionable, you derive that in some fashion.  
[21] So I want to ask you: What standard do you use or  
[22] rely upon in reaching the conclusion or opinion  
[23] that prices after 1986 --

[24] A: Uh-huh.

[25] Q: -- were unconscionable?

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[1] A: I think I discuss that in my opinion later  
[2] in my --

[3] Q: If you can point me to it, please.

[4] A: Yeah. I will find it here. Paragraph 18  
[5] describes the price increase that occurred in '86,  
[6] the relationship between customer payments and the  
[7] purchase price available -- stated that was  
[8] available for the same product. So by the time of  
[9] this price increase, a customer who had been  
[10] leasing in December of '83 would have paid \$45 for  
[11] a set that was available for purchase for 19.95.  
[12] This was, my simple calculation, over 200 percent  
[13] of the purchase price; and at that point you start  
[14] triggering the concerns that led many states to  
[15] be -- to have enacted legislation to address this  
[16] sort of transaction.

[17] Q: Okay. So when you state the opinion on --  
[18] in paragraph 3 that pricing was exorbitant and,  
[19] therefore, unconscionable, the standard that you  
[20] use to reach that conclusion is as stated in  
[21] paragraph 18; that it reached a level where lease  
[22] payments came to be 200 percent of price?

[23] A: Yes.

[24] Q: Okay.

[25] A: And, of course, it only got worse as time

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(1) went on, because every two years there was another  
(2) price increase for a piece of equipment that was  
(3) worth even less.

(4) Q: But trying to state a measure that 200  
(5) percent of the purchase price --

(6) A: Yes.

(7) Q: -- is some sort of a baseline that you use  
(8) as your measure for unconscionability?

(9) A: Yes. In this case, yes.

(10) Q: I just want to make sure I'm fairly stating  
(11) it there.

(12) A: I believe that's correct.

(13) Q: Is there any other standard or  
(14) consideration that you relied upon in reaching your  
(15) conclusion that prices as of 1986 were  
(16) unconscionable?

(17) A: Well, the generic description that I gave  
(18) you, which is a price that is way beyond the  
(19) reasonable value of the product, of the service in  
(20) question, is the predicate that you -- any analyst  
(21) in this field would start with. But at some point  
(22) you need a number or a way to say, you know, at  
(23) this point the line was crossed; and I've described  
(24) the line that I've proposed in this expert opinion.

(25) Q: Okay. So if I understand it, the line that

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(1) involvement with rent-to-own laws?

(2) A: That would be one example, yes.

(3) Q: What other examples or are there other  
(4) examples in your report that you can point me to?

(5) A: In my report, probably not. In my three-  
(6) or four-year history as the superintendent of the  
(7) Main Consumer Credit Code, I'm sure there were  
(8) others. In terms of lenders, probably the lender  
(9) that I discussed earlier that sued the State of  
(10) Maine for damages to their business opportunities  
(11) as a result of shutting them down and so forth.

(12) Q: You were looking at pricing and maybe  
(13) unconscionability in the context of credit  
(14) transactions and interest rates?

(15) A: Yes.

(16) Q: Other than this matter involving a civil  
(17) lawsuit, have you ever been called upon to give an  
(18) assessment of unconscionability of pricing before  
(19) any public utility, before any court, other  
(20) administrative body?

(21) A: I've certainly provided testimony in the  
(22) context of public utility regulation about whether  
(23) proposed tariffs and charges by a public utility  
(24) are reasonable or unreasonable. Those are the  
(25) terms used in public utility regulation. But the

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(1) you establish in reaching the conclusion that  
(2) prices were unconscionable is that 200 percent of  
(3) purchase price mark?

(4) A: Yes.

(5) Q: Okay. Have you, in your background or  
(6) experience, been called upon by any of -- in any of  
(7) your engagements or in any testimony to provide any  
(8) opinions or assessments of unconscionable pricing  
(9) before this engagement?

(10) A: I am not -- I think the answer to that is  
(11) yes, but it would be in the context of my  
(12) regulation of consumer credit transactions and my  
(13) oversight of credit activities and prices charged  
(14) for credit activities by creditors, reviewing  
(15) interest rates, additional fees and charges, and  
(16) supervising that kind of activity. It is typically  
(17) not a term that is used in the regulatory field for  
(18) tariffed services, which is the Public Utilities  
(19) Commission's type of activity that I've been  
(20) working in most recently.

(21) Q: Just so I'm clear, when you say that your  
(22) experience with that term would have been in  
(23) connection with consumer credit transactions and  
(24) interest rates, are you referring to the  
(25) information that you've provided here as far as

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(1) concept of using the term specifically of  
(2) unconscionability is not typically used with public  
(3) utility regulation, and so there's no recent court  
(4) case or piece of testimony that I can point you to  
(5) on that matter. But I think I did refer you to my  
(6) activities in --

(7) Q: Credit areas.

(8) A: -- credit.

(9) Q: Okay. What about service as a mediator or  
(10) arbitrator or administrative law judge, any  
(11) capacity like that; have you ever been called upon  
(12) to give an assessment or evaluation where the  
(13) prices were unconscionable?

(14) A: No.

(15) Q: Is it your position here that AT&T's  
(16) pricing of leased services as of 1986 were  
(17) unconscionable as to all embedded-base customers?

(18) A: For these leasing of the telephone sets,  
(19) yes.

(20) Q: Okay. Would that be true also for leasers  
(21) who were young or middle aged?

(22) A: Yes. I made no distinction.

(23) Q: As far as any demographic group?

(24) A: No.

(25) Q: What about as to customers who expressed a



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[1] preference or desire to lease the phone; would your  
[2] opinion be the same as far as unconscionable  
[3] pricing as to them?  
[4] A: Could you give me an example about what  
[5] you're talking about? What do you mean by  
[6] customers who expressed a desire for leasing?  
[7] Q: Sure. Looking at your summary of documents  
[8] and some of the documents that was produced as  
[9] provided to you, I saw a number of market research  
[10] reports. You saw those kinds of documents?  
[11] A: Yes.  
[12] Q: And you focus on some of those reports and,  
[13] I believe, facts such as inertia or people that  
[14] couldn't express reasons for leasing; do you recall  
[15] that?  
[16] A: Yes.  
[17] Q: Do you also recall in those documents  
[18] expressions by some customers of their reasons for  
[19] leasing and reasons why they wanted to lease?  
[20] A: I saw the results of some surveys or  
[21] questionnaires in which people were given a list of  
[22] reasons why they wanted to lease, and they checked  
[23] things off or selected one or more of those reasons  
[24] why they were satisfied or not satisfied or  
[25] whatever. Yes, I saw those lists.

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[1] Q: Did you understand those to be reasons they  
[2] expressed for either why they were satisfied or why  
[3] they continued to lease?  
[4] A: Yes.  
[5] Q: As to those customers, is it your position  
[6] that AT&T's pricing for embedded-base equipment  
[7] after 1986 was still unconscionable?  
[8] A: Yes.  
[9] Q: What about with regard to new leasers after  
[10] 1986?  
[11] A: That was not the subject of my report.  
[12] Q: Do you have any opinion as to whether a new  
[13] leaser who started leasing in January 1986 and is  
[14] still leasing today that same piece of equipment --  
[15] whether the pricing for them is unconscionable?  
[16] A: I do not have an opinion about that.  
[17] Q: Under the standard that you expressed a  
[18] moment ago in paragraph 18, using that 200 percent  
[19] of the purchase price as a benchmark, would the  
[20] price -- would the prices to those consumers, to  
[21] those customers who were new leasers in 1986 and  
[22] still lease today, wouldn't those have been  
[23] unconscionable under your definition?  
[24] A: Not necessarily. They may have been given  
[25] disclosures, purchase options, and various other

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[1] pieces of information that would -- would  
[2] potentially create a very significant -- a  
[3] different situation, but that's hypothetical since  
[4] I did not review those transactions in any detail.  
[5] Q: So is it your opinion that disclosures,  
[6] customer information, purchase options, and perhaps  
[7] other offerings or factors could influence whether  
[8] or not pricing was unconscionable even if it  
[9] reached a 200 percent mark?  
[10] A: Yes, because as I've pointed out repeatedly  
[11] in this case, the uniqueness of this transaction is  
[12] what we're dealing with here. They were all given  
[13] to AT&T by default. There was a negative option.  
[14] They were never given affirmative disclosures.  
[15] They didn't select to enter into this transaction  
[16] affirmatively, and AT&T continued to raise prices  
[17] in a way -- well, as I've described in my report.  
[18] But the point is there is a totality of  
[19] circumstances around these transactions and this  
[20] history that are key to the conclusions that I've  
[21] made here, and that's why we can't summarize my  
[22] overall statement in one sentence.  
[23] Q: So if I understand the conclusion that  
[24] prices were unconscionable because lease prices  
[25] exceeded 200 percent of the sale price --

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[1] A: Uh-huh.  
[2] Q: -- can be influenced by the kind of  
[3] disclosures, by the kind of customer information,  
[4] by other offerings like sale in place?  
[5] A: Yes.  
[6] Q: Okay. I want to go back and focus for a  
[7] moment on your discussion about why prices were  
[8] exorbitant and the two factors that we identified  
[9] before that you say the price charged to -- Looking  
[10] back on paragraph 3 of page 3.  
[11] A: Yes.  
[12] Q: The price charged to these customers was  
[13] exorbitant in relation to the value of the  
[14] telephone set and in relation to the value of the  
[15] leasing service. Let's focus for a minute on value  
[16] of the telephone set. What do you mean by that  
[17] statement; that they were exorbitant in relation to  
[18] the value of the telephone set?  
[19] A: The telephone sets in question were not  
[20] manufactured after 1984. They had been priced  
[21] during the transition period at a rate that I  
[22] accept, because I have no reason not to accept it,  
[23] as a proper rate to purchase the phone. Others may  
[24] quibble about that, mind you, but that's not me.  
[25] Q: You mean the purchase price?



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[1] A: Right, exactly.  
[2] Q: I'm sorry. Go ahead.  
[3] A: I accept that, in other words, for the  
[4] purposes of this discussion and my analysis. And  
[5] so we know it certainly never was worth more than  
[6] that, at least I make that assumption. And we know  
[7] that they were never newly manufactured after that  
[8] date and rapidly aging as time went on. And so I  
[9] point to all of those factors when I make that  
[10] statement.  
[11] Q: So those would be the grounds for your  
[12] saying the value of the telephone set was --  
[13] A: Yes.  
[14] Q: -- a factor?  
[15] A: Right.  
[16] Q: Anything else?  
[17] A: I can't think of it offhand. I mean, my  
[18] report speaks for itself, but those are the key  
[19] points.  
[20] Q: Those are the points you had in mind when  
[21] you made that conclusion?  
[22] A: Yes.  
[23] Q: You also talk about the price being  
[24] exorbitant in relation to the value of the leasing  
[25] service.

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[1] A: Uh-huh.  
[2] Q: What do you mean by that?  
[3] A: Well, I've discussed that in quite a lot of  
[4] detail in my report, and I certainly point you to  
[5] the fact that AT&T's documents repeatedly  
[6] demonstrated that there were very little expenses  
[7] associated with delivering the lease guarantees to  
[8] customers. Most people didn't need repairs. So  
[9] that the company was able to make very large  
[10] profits on its leasing business with delivering  
[11] very little in the way of economic or lease  
[12] benefits to the customers.  
[13] Q: When you say leasing service -- I'll just  
[14] ask and maybe shortcut it here. You have a  
[15] paragraph or two that go into detail on lease  
[16] guarantees?  
[17] A: Yes.  
[18] Q: I'll try to find the number if I can get  
[19] over here. I'm just wondering --  
[20] A: Twenty-seven.  
[21] Q: Okay. -- if that is what you make  
[22] reference to when you're talking about the leasing  
[23] service or if it's something else.  
[24] A: Well, there's a number of paragraphs here  
[25] in which I discuss the AT&T's own analysis of the

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[1] economics of providing this service and making a  
[2] profit. But in this particular paragraph we are  
[3] going through, I did go through here the six  
[4] guarantees and provide my opinion about the value  
[5] of that in light of the prices charged and  
[6] increased every two years for almost all of these  
[7] products.  
[8] Q: My question is really much simpler than  
[9] that.  
[10] A: Okay.  
[11] Q: I'm just trying to find out: When you say  
[12] value of the leasing service, what is the leasing  
[13] service you're talking about? What is encompassed  
[14] by that?  
[15] A: Okay. That would encompass all of the  
[16] promises that AT&T made to its customers about what  
[17] they were getting in return for the prices they  
[18] were charging them.  
[19] Q: And is that what you have detailed in  
[20] paragraphs 27?  
[21] A: These are the six guarantees that AT&T  
[22] widely advertised and informed its customers it was  
[23] providing them as a condition of providing the  
[24] lease product to them.  
[25] Q: And those are the promises you're making

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[1] reference to?  
[2] A: That's right.  
[3] Q: Other than what you have detailed in  
[4] paragraph 27 as the six guarantees, is there  
[5] anything else that is encompassed by your phrase  
[6] leasing service, anything else you understand to be  
[7] included in the leasing service aside from that?  
[8] A: I discuss in here the hard-wire party line  
[9] phone customers and their particular needs. I've  
[10] discussed -- That's paragraph 28. I've discussed  
[11] in here about the complaint process on paragraph  
[12] 30. I discuss in here the billing service provided  
[13] to customers and the disclosures and formatting of  
[14] that. All of those things are involved in that  
[15] statement about leasing services.  
[16] Q: Okay. How do you -- Well, let me ask this  
[17] a better way. When you say that prices are  
[18] exorbitant in relationship to the value of the  
[19] lease service, what's your standard or measure for  
[20] valuing those lease services?  
[21] A: By value I am relying on the AT&T documents  
[22] that talk about the costs they've incurred to  
[23] provide those services to service the leases that  
[24] they had, and the AT&T documents which describe the  
[25] profit that they were making on providing this

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(1) product, and the documents that AT&T provided which  
(2) demonstrate that a very large number of customers  
(3) didn't value or understand or think that they were  
(4) getting anything out of the lease, because they  
(5) were just doing it for inertia purposes.

(6) Q: So the basis for your statement that prices  
(7) were exorbitant in relation to the value of leasing  
(8) service is based on those particular categories of  
(9) documents --

(10) A: Right.

(11) Q: -- that you just described?

(12) A: Right. I did not conduct my own economic  
(13) analysis of the value of these services. I used  
(14) AT&T's analysis of the cost of providing these  
(15) services.

(16) Q: Let me take you back to that for a minute.  
(17) You said you looked to AT&T documents about the  
(18) costs incurred in providing those services.

(19) A: Right.

(20) Q: Can you point me to particular documents --  
(21) to a particular document or documents that you rely  
(22) upon for that?

(23) A: I can give you an example, and that would  
(24) probably be in your spreadsheet.

(25) Q: Why don't we just stop for a second, and

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(1) Q: All right. So you have basically three  
(2) boxes there on that?

(3) A: There are, yes. There's some on the next  
(4) page, too. But those three boxes are certainly  
(5) responsive. And then I would also point you to --  
(6) in the middle of page 4, 1989 lease business plans;  
(7) and the comment box reads, Location life of EB  
(8) products covers the break-even point between 3.4  
(9) and 5 times.

(10) Q: I'm sorry. Can you --

(11) A: Nineteen --

(12) Q: It doesn't show up on the record, but if  
(13) you can put your finger on where you're talking  
(14) about and then I'll follow.

(15) A: It's a little more than halfway down the  
(16) page. And the date is 1989.

(17) Q: Okay.

(18) A: The next box, lease business plans,  
(19) training materials.

(20) Q: And you know what might actually make it  
(21) clearer on the record, if you'll look at the far  
(22) right-hand column for each one, I believe there's a  
(23) DCR or a document number.

(24) A: Yes.

(25) Q: If you could read that in when you come to

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(1) let's mark it so we know what we're talking about.  
(2) (Defendants' Exhibit Alexander 5  
(3) marked for identification.)  
(4) Ms. Alexander, I've handed you Exhibit 5,  
(5) and we were talking about what document or  
(6) documents you had in mind when you said that there  
(7) were AT&T documents indicating costs incurred; and  
(8) I'd just like you to identify for me what  
(9) specifically you're making reference to.

(10) A: Right. And this spreadsheet at which -- as  
(11) you know because I said so in my report, is not a  
(12) list of every document I looked at but helped me  
(13) organize and locate specific types of documents  
(14) that I added here. But I would point you to the  
(15) lease SBU business plan for 1986. I could point  
(16) you to memos --

(17) Q: Can we stop with the first one you listed,  
(18) because looking at the category column, I see a  
(19) couple of things that fit the bill there. You're  
(20) looking at page 2 of Exhibit 6 (sic)?

(21) A: I'm on page 2 and looking at the bottom of  
(22) the page.

(23) Q: Uh-huh. I'm there.

(24) A: You'll see a number of citations and  
(25) quotations from the lease business plan for 1986.

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(1) one of the documents that you believe qualifies as  
(2) something reflecting costs incurred that you relied  
(3) on.

(4) A: Right. I'm giving you examples.

(5) Q: Sure.

(6) A: Let's go back to the 1989 citation and read  
(7) the DCR for that, which is 26604.

(8) Q: Uh-huh.

(9) A: And the next box is 611683. I would point  
(10) to 1993 on the next page, the last item on page 5  
(11) with the DCR of 1550713, which is a memo  
(12) internally.

(13) Q: Let's stop there for just a second. That  
(14) appears to be noted as a 1993 lease business  
(15) profits internal memo; is that correct?

(16) A: Yes.

(17) Q: What specific information in that entry do  
(18) you rely upon to conclude that costs -- about costs  
(19) incurred to provide the leased equipment?

(20) A: The profit for a 12-month period for a  
(21) traditional rotary desk phone is \$44.04 and a  
(22) hundred 10 dollars and 83 cents for 36 months. The  
(23) break-even point for this product is 5.8 months.

(24) Q: So that's what you're citing to?

(25) A: Right. And he is quoting from a document

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[1] that is also cited in the box previous to this one  
[2] in which there's a chart showing incremental  
[3] profits, costs incurred, recurring and nonrecurring  
[4] expenses for all of the different desks and rotary  
[5] models, and that document citation is 1550713.  
[6] Q: Okay.  
[7] A: So those are the examples of the kinds of  
[8] materials that I've reviewed to -- to make that  
[9] statement.  
[10] Q: And the statement we're talking about is  
[11] your determination of what costs were incurred to  
[12] provide the services?  
[13] A: Yes.  
[14] Q: Going back just a moment to the statement  
[15] about the value of the telephone set, I believe I  
[16] heard you say earlier, but I want to make sure that  
[17] I clarify it or at least ask the right question.  
[18] You gave me a list of those elements or factors you  
[19] looked at to determine value of the telephone  
[20] equipment itself.  
[21] A: Yes.  
[22] Q: And if I understand, you did not undertake  
[23] any economic analysis of the telephone equipment's  
[24] value?  
[25] A: That's correct.

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[1] Q: Did you rely upon any economic analysis of  
[2] the value of the equipment itself?  
[3] A: No. With the exception of the AT&T  
[4] documents themselves. But there was no other  
[5] document that I reviewed or -- or other expert's  
[6] opinion that I reviewed. It was relying on AT&T's  
[7] documents about these phones, the 1983 offer to buy  
[8] and so forth as I indicated earlier.  
[9] Q: And when you say AT&T's documents about the  
[10] value of the equipment, are you referring to  
[11] documents that show sale prices?  
[12] A: Sale prices, the termination charge that  
[13] was used, the price -- See, none of these phones  
[14] were available in new format, because they were all  
[15] refurbished and old. So it was hard to point to  
[16] AT&T's offers for new telephone sets. It was more  
[17] a matter of what was available for the inventory  
[18] sales of these sets.  
[19] Q: If we have a list of those factors you  
[20] considered in determining the value of the  
[21] telephone set, in addition to the ones you listed  
[22] previously, we would add consideration of sale  
[23] price, termination charge, that type of thing?  
[24] A: Right. AT&T's own sale prices, not  
[25] competitive marketer sale prices.

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[1] Q: Let me ask you a question about Exhibit 6  
[2] (sic), since we're here. We'll go back to it in a  
[3] bit.  
[4] A: Five or six?  
[5] Q: I'm sorry. Six is the spreadsheet, is it  
[6] not?  
[7] MR. MARKER: It's five.  
[8] A: It's five.  
[9] Q: I'm sorry. I stand corrected. Okay.  
[10] Five, did you put this together yourself?  
[11] A: Yes, I did.  
[12] Q: Did you provide a copy to any of the other  
[13] witnesses in the case?  
[14] A: No.  
[15] Q: Did you share a copy with Ms. TerKeurst?  
[16] A: No. I believe I told her I was going to  
[17] prepare such a document as my way of handling the  
[18] plethora of information involved in the case; but,  
[19] no, I never provided it to her.  
[20] Q: And I believe you testified and your report  
[21] states this isn't meant to be a complete collection  
[22] of documents you reviewed or relied upon.  
[23] A: Right.  
[24] Q: But I wonder: How did a document make the  
[25] cut? How did you decide what was important enough

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[1] here to list as part of the summary of key events  
[2] and record evidence and what to leave off?  
[3] A: As I went through the documents and as you  
[4] know the volume was significant -- we talked about  
[5] that earlier on -- I realized that my ability to  
[6] categorize all of the material in these boxes was  
[7] limited in the sense that I would either have to  
[8] hire somebody to do it or devote my entire summer  
[9] to this case; and neither proposition seemed  
[10] appropriate to me.  
[11] And so what I decided to do was to go  
[12] through the documents in a way that allowed me to  
[13] say, okay, I've got about ten marketing plans here;  
[14] a lot of them are repetitious. And, you know, I  
[15] picked out the ones that I thought had the best  
[16] examples of the kinds of quotes I wanted, the kinds  
[17] of information that was in there, and the kinds of  
[18] triggers that would help me organize what I was  
[19] finding and help me look at it from the perspective  
[20] of -- of both billing, marketing, demographic  
[21] surveys, marketing plans, business unit plans and  
[22] so forth.  
[23] It was a way for me to organize my thinking  
[24] and to provide citations to do what I've just done  
[25] for you, which is to provide examples of the kinds

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11) of material that buttress my final conclusions.  
12) Q: So you were looking to set forth what you  
13) thought were the best examples to support the  
14) opinions?  
15) A: I would say they are definitely the most  
16) relevant examples, and I cannot say that I then  
17) thought about it in terms of best. But it  
18) certainly was highly relevant and exemplary in my  
19) opinion for each of these matters.  
110) Q: And I'm wondering since you had quite a few  
111) boxes of documents and I've seen some of those  
112) documents whether you included on your list of  
113) summary of key events any documents that would be  
114) favorable or would reflect favorably upon the lease  
115) business.  
116) A: Didn't find many of those.  
117) Q: Did you find any?  
118) A: Well, I found AT&T's own attempts to train  
119) its people to find this process favorable, but I  
120) was not impressed with that effort, if I may say.  
121) Q: Okay. Other than documents reflecting  
122) training efforts, did you find any other documents  
123) in the 15 or so boxes that you deemed favorable to  
124) the lease business?  
125) A: I don't know what you mean by the term

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11) favorable to the lease business. Did they have  
12) statements in it that AT&T found favorable? Did  
13) they have statements that reflected consumer  
14) opinion? I mean, I'm not sure what you mean by  
15) favorable.  
16) Q: Let me clarify.  
17) A: Help me.  
18) Q: Did you find in those several boxes that  
19) you received and reviewed any documents that you  
110) considered favorable to the lease business other  
111) than the training item that you've mentioned?  
112) A: Well, I'm still trying to figure out what  
113) you mean by favorable. Did I find any documents  
114) that made me feel that somehow I hadn't presented  
115) the entire picture with my report? No, I didn't  
116) find any of those documents.  
117) (Off the record.)  
118) (Enter Mr. Armstrong.)  
119) Q: Ms. Alexander, I want to go back to the  
120) concept of unconscionability that we were talking  
121) about just a little bit ago.  
122) A: Okay.  
123) Q: If I understand what you told me about the  
124) measure that you used of 200 percent -- I shouldn't  
125) say measure -- benchmark 200 percent of the

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11) purchase price that AT&T's lease prices for  
12) embedded-base equipment became unconscionable in  
13) January of 1986 after that benchmark had been  
14) reached for that equipment; is that a fair  
15) restatement?  
16) A: No, I don't think so.  
17) Q: Okay.  
18) A: I think we need to go to the statement.  
19) Q: I'll let you point me to it.  
110) A: Yeah. We've done this a couple times here,  
111) but we'll do it again. Paragraph 18, page 13,  
112) paragraph 18.  
113) Q: And you're talking about the statement. At  
114) the time of the price increase, in 1986, a customer  
115) with a traditional rotary desk phone would have  
116) paid \$45 for the telephone set listed in the  
117) December '83 brochure as available to purchase for  
118) 19.95, which you calculate to be more than 200  
119) percent of the purchase price?  
120) A: Yes.  
121) Q: What I'm trying to determine is at what  
122) point in your analysis did the pricing become  
123) unconscionable. Was it when that 200 percent  
124) benchmark was reached?  
125) A: It was at the time of the mid-1986 price

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11) increase, at the time of this price increase.  
12) Q: All right. So at the time of the price  
13) increase. What if before the price increase that  
14) 200 percent of the purchase price had already been  
15) exceeded; would the prices in your analysis be  
16) unconscionable at that point or not until the  
17) increase?  
18) MR. MARKER: Excuse me. I'm sorry. I was  
19) distracted for a second, and I'd like to get the  
110) question read back.  
111) Q: Sure.  
112) (The requested portion of the  
113) record read by the reporter.)  
114) A: Well, I think it's important to make it  
115) clear that any statement I'm making about prices is  
116) influenced by the totality of activities that were  
117) occurring, did occur, and were going to occur  
118) subsequent to this date. But the unconscionability  
119) that I focused on here and that this paragraph  
120) focuses on starts occurring with AT&T's increase in  
121) the monthly rate in mid-'86, and I gave an example  
122) of one of the increases that was mandated at that  
123) time.  
124) Q: All right. So if I understand, it's at the  
125) point of the price increase, not necessarily when



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[1] 200 percent of the purchase price is reached?  
[2] A: In my opinion in this particular situation,  
[3] I focus on that event as the key trigger for the  
[4] unconscionability that gets only worse over time,  
[5] yes.  
[6] Q: Okay. Let me ask this question: Had there  
[7] been no price increase in 1986, if prices had  
[8] remained at the levels they were in '84 and '85,  
[9] but that 200 percent mark was reached, in your  
[10] opinion, would the prices have then still been  
[11] unconscionable?  
[12] A: I don't know.  
[13] Q: You don't have an opinion on that?  
[14] A: I certainly don't off the cuff, no. It  
[15] would depend on all of the circumstances involved  
[16] in the communications with customers and other  
[17] activities. It's certainly -- Well, that's an  
[18] interesting question. But I don't have an  
[19] immediate response for you, since that -- that's  
[20] not what happened.  
[21] Q: So as you sit here today, you don't have an  
[22] opinion on that?  
[23] A: I don't.  
[24] Q: And you explained to me before that, for  
[25] example, in the context of new leasers who might

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[1] have started leasing after 1984 that even if they  
[2] reached 200 percent -- if they had paid 200 percent  
[3] of the purchase price, you wouldn't necessarily  
[4] include -- conclude unconscionability dependent  
[5] upon what information or disclosure were made  
[6] available?  
[7] A: Well, I think I made it clear I did not  
[8] look at that group of customers. I didn't analyze  
[9] the interactions, the disclosures, the pricing or  
[10] the exact telephones that they were being enticed  
[11] to lease. And so I do not have an opinion about  
[12] that group of customers.  
[13] Q: In your opinion -- And not focusing on that  
[14] group of customers. Instead let's focus on the  
[15] embedded-base customers. If the customer was fully  
[16] informed about what he was paying, what he was  
[17] paying for, what his equipment options were, but  
[18] nevertheless had paid more than 200 percent of the  
[19] purchase price, would you still conclude that the  
[20] pricing was unconscionable?  
[21] A: If AT&T had structured this transaction as  
[22] a retail installment sale, indeed the customer  
[23] would own the equipment at that point.  
[24] Q: And my question was different. My question  
[25] is: Regardless of any passage of ownership, if the

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[1] customer had been fully informed of his equipment  
[2] options, what he was leasing, how much he was  
[3] paying to lease, would prices still be  
[4] unconscionable when he reached 200 percent of the  
[5] purchase price in that scenario?  
[6] A: I'm sorry. I don't know what scenario you  
[7] have in mind. That's -- It's just not relevant to  
[8] what I looked at, what I reviewed, or what's  
[9] happening here. You can't find a commercial  
[10] transaction in the marketplace that looks like this  
[11] thing. To find something that would allow me to  
[12] consider an example on the if-but kind of approach,  
[13] I'm at a loss. I don't know what you're proposing  
[14] here.  
[15] Q: You've suggested that customer educational  
[16] materials should have been provided. Do you recall  
[17] that from your report?  
[18] A: I've described here my concerns with ones  
[19] that were provided, yes.  
[20] Q: And you've also outlined disclosures that  
[21] you say would be triggered had this lease  
[22] transaction been subject to consumer lease laws.  
[23] A: Yes.  
[24] Q: Okay. Had those disclosures been made in  
[25] the form and type of information that you've laid

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[1] out there, if those had been made and customers  
[2] were aware of that information, would you still  
[3] conclude that prices were unconscionable when 200  
[4] percent of the purchase price was reached?  
[5] A: You can only assume a transaction reaches  
[6] arguably reasonable if the customer affirmatively  
[7] had entered into such transaction with all of the  
[8] disclosures of either the Consumer Leasing Act or  
[9] Retail Installment Sales Acts. And as you know,  
[10] many state laws would have transferred ownership of  
[11] this equipment at some point in that process.  
[12] Q: Okay. So let's go back to what we did have  
[13] here in 1983. Disclosures were required.  
[14] Information was provided pursuant to the FCC order,  
[15] correct?  
[16] A: Inadequate disclosures, but there was a  
[17] document issued in December of 1983, yes.  
[18] Q: All right. And you've outlined criticisms  
[19] you have with that?  
[20] A: Yes.  
[21] Q: If the customer received that information,  
[22] those disclosures, the brochure that was approved  
[23] by the FCC, and any other information that might  
[24] have been available, and fully understood what he  
[25] was paying for and what his equipment options were,

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[1] is it your position that pricing to that customer  
[2] was still unconscionable when it reached 200  
[3] percent of the purchase price?  
[4] A: There's too much that would have to be  
[5] known about the nature of that transaction.  
[6] Negative option, positive option, the disclosures  
[7] that were given, the kinds of consumer education  
[8] campaign, the pricing and the changes that were  
[9] made in the price, the way people were informed  
[10] about the pricing, the way people were informed  
[11] about billing, all of those things are key factors  
[12] in this analysis that I reflected in my report and  
[13] that contribute to the conclusions that I've  
[14] provided in this report. And it's just not  
[15] possible to change one fact and somehow make it all  
[16] different.  
[17] Q: Putting aside all of the information and  
[18] disclosures, I'm a customer who knows I'm leasing a  
[19] phone, I know what I'm paying for it, I know I can  
[20] go to Radio Shack and buy one, never read a  
[21] disclosure, never read anything in my bills, I just  
[22] know this from other sources, is it unconscionable  
[23] when I reached 200 percent of my purchase price?  
[24] A: I have no idea.  
[25] Q: You don't have an opinion about that?

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[1] A: No. I have an opinion about the documents  
[2] and the transactions I reviewed, and that's what  
[3] I've come here to provide an opinion on.  
[4] Q: All right. So with that customer who knows  
[5] what he's paying for and knows what his equipment  
[6] options are, regardless of any other information  
[7] out there, you don't have an opinion as to whether  
[8] pricing is unconscionable as to him?  
[9] A: Not with all of the other factors that I  
[10] described that I looked at in this proceeding and  
[11] that would have to be considered in making a  
[12] conclusion about the one you're proffering.  
[13] Q: I'm talking not about all of the other  
[14] customers and all the information. I'm a customer  
[15] who never read any of it. I pitched the stuff in  
[16] my bill. I never read the thing that was issued  
[17] by -- or approved by the FCC. I just happen to  
[18] know and happen to be aware of what my options are  
[19] and what I'm paying for the leased equipment. Is  
[20] it unconscionable as to me when I reach 200  
[21] percent?  
[22] A: I've tried to answer your question. I  
[23] don't know the context within which this example is  
[24] being presented to me. I'm comfortable with the  
[25] material that I reviewed, the conclusions I've

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[1] reached, the confluence of events that resulted in  
[2] this series of transactions taking place.  
[3] Q: My question has nothing to do with any of  
[4] that. My question is purely you have a customer  
[5] who --  
[6] A: Customer of what?  
[7] Q: Let's say you have an embedded-base  
[8] customer.  
[9] A: So we're talking a telephone customer.  
[10] Q: Let me just lay out the question.  
[11] A: Well --  
[12] Q: You have an embedded-base customer who has  
[13] a rotary phone.  
[14] A: Okay.  
[15] Q: End of 1983.  
[16] A: All right.  
[17] Q: He continues leasing that phone in 1984.  
[18] A: Okay.  
[19] Q: He has not reviewed or considered any of  
[20] the informational materials provided. He has not  
[21] read the FCC-approved brochure. He simply knows,  
[22] based on information in the marketplace or  
[23] elsewhere and from looking at his bill -- he knows  
[24] what he's paying for. He knows he paying to lease  
[25] a rotary phone. He knows how much he's paying per

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[1] month, and he knows he can go to Radio Shack and  
[2] buy a phone. These are things he knows. When he  
[3] has paid 200 percent of the purchase price, is it  
[4] unconscionable as to him?  
[5] A: Yes.  
[6] Q: Why?  
[7] A: Consumer laws are designed to protect the  
[8] average consumer. There will, within that group of  
[9] people, be some who know and some who don't know,  
[10] and consumer protection policy establishes a set of  
[11] requirements that are designed to protect people  
[12] who don't know, people who think they know, and  
[13] people who really do know. And so we're talking  
[14] policies here that are applicable to a wide range  
[15] of circumstances. Policies are often influenced by  
[16] those who don't know, especially when there's  
[17] evidence that a large group don't know. So the  
[18] policies and laws and approaches that I've outlined  
[19] here are designed for the group in general. You  
[20] can always find exceptions to every rule as to who  
[21] knows and who doesn't know, but that's not the  
[22] point I'm dealing with here.  
[23] Q: So even if he knows, the price is still  
[24] unconscionable as to him?  
[25] A: Because what we're dealing with here is

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[1] someone who did not enter into the transaction but  
[2] who elected to do nothing. You're positing someone  
[3] who knowingly elected to do nothing, and I am  
[4] saying that that aspect of this is often a matter  
[5] that is the subject of protection by consumer  
[6] credit laws.  
[7] Q: And that still makes it --  
[8] A: Let me give you an example. This is  
[9] important. There are many low-income consumers in  
[10] this state or elsewhere who if given the  
[11] opportunity to enter into an outrageous,  
[12] exorbitant, and unconscionable interest rate loan  
[13] will do so, will sign the documents, will look at  
[14] the disclosures, will elect that transaction,  
[15] because they have an immediate need and they are  
[16] making a choice that they think they don't have a  
[17] choice about. You know, they are doing something  
[18] that they think they need to do to solve their  
[19] immediate problem. The law prohibits it, even if  
[20] the customer seeks out that opportunity and tries  
[21] to enter into that transaction, because society as  
[22] a whole has decided that that kind of credit should  
[23] not be made available to people even if they want  
[24] it. And that's a really good example of the kind  
[25] of situation that I think you're asking me to

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[1] consider.  
[2] Q: So with that scenario, even if I'm a  
[3] customer who knows exactly what I'm paying for and  
[4] what my options are --  
[5] A: Right.  
[6] Q: -- it's still unconscionable as to me?  
[7] A: And that's what the Retail Installment  
[8] Sales Acts are doing.  
[9] Q: Just for the record, can you first answer  
[10] the question and then give your explanation? Is  
[11] that your testimony; it is still unconscionable as  
[12] to that person?  
[13] A: That's right.  
[14] Q: Okay. Going back to your summary of  
[15] opinion, we've been talking about the question of  
[16] pricing. You also go on in paragraph 3 to talk  
[17] about practices. I'll just read in your statement  
[18] here. In the attempt to retain consumer lease  
[19] customers, AT&T used unfair and misleading  
[20] practices in structuring its month-to-month  
[21] consumer lease, in communicating with its customers  
[22] about the leasing of telephone equipment, in  
[23] responding to customer complaints and inquiries  
[24] about leasing, and in the pricing of its leased  
[25] telephone equipment for residential customers. And

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[1] then you go on from there to talk about as a result  
[2] of those practices, people pay an enormous sum for  
[3] telephone sets that they could have bought  
[4] elsewhere for far less. Do you see that statement?  
[5] A: Yes.  
[6] Q: Focusing on the practices for a minute,  
[7] what specific practices do you identify as being  
[8] unfair and misleading by AT&T or Lucent?  
[9] A: That's the subject of this entire report.  
[10] All of the detail statements that occur after the  
[11] summary and that are starting in paragraph 9 and  
[12] concluding in paragraph 40, I think, describes  
[13] many, many aspects of the misleading aspects or the  
[14] lack of education, the lack of information on  
[15] bills, the lack of any affirmative statements to  
[16] customers about what was going on, the lack of  
[17] disclosures about the price of the product, and so  
[18] forth. The whole report's full of that.  
[19] Q: Let me go back. I'm trying to record what  
[20] you just said. I realize that the report contains  
[21] a lot of different information, a lot of different  
[22] statements. What I'm trying to focus on and get  
[23] you to identify specifically for me is which of  
[24] those do you put under the category of support for  
[25] your statement that AT&T used unfair and misleading

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[1] practices. What specific practices do you point  
[2] to?  
[3] A: I would point to my entire report. If  
[4] there's some paragraph you want me to focus on to  
[5] discuss further, I'm happy to do that. But the  
[6] entire report contains examples throughout it.  
[7] Q: All right. Let's walk through that.  
[8] Let's -- Well, when you say the entire report, are  
[9] you including the summary of opinion, or are you  
[10] focusing on the paragraphs that come after that  
[11] that gives specifics?  
[12] A: Well, as I indicated earlier, the summary  
[13] is an overview. The specifics follow in the  
[14] paragraphs that are labeled nine, but obviously I  
[15] view this document as an integrated whole.  
[16] Q: All right. Well, starting with  
[17] paragraph 9 --  
[18] A: Okay.  
[19] Q: -- and if you come to some paragraphs that  
[20] don't include items that you would include under  
[21] practices, that's fine, you can just let me know  
[22] that. But in paragraph 9 are there any particular  
[23] practices by AT&T that you would include under this  
[24] statement we used, unfair and misleading practices?  
[25] A: No. This paragraph is more of an



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[1] historical description.  
[2] Q: What about paragraph 10?  
[3] A: The brochure that was issued in 1983 in  
[4] which I've criticized describing the information  
[5] that was missing, the lack of proper information,  
[6] and so forth.  
[7] Q: So you would include the brochure that was  
[8] sent out in late 1983 --  
[9] A: Right.  
[10] Q: -- as an unfair and misleading practice?  
[11] A: As the beginning of a series of  
[12] communications that has to start with that  
[13] communication, yes.  
[14] Q: And we'll go back and talk about the  
[15] brochure in a moment. But anything else aside from  
[16] the brochure in paragraph 10 that you identify as a  
[17] misleading practice by AT&T?  
[18] A: Well, no. This paragraph is primarily  
[19] about that brochure, yes.  
[20] Q: What about paragraph 11?  
[21] A: This is an additional paragraph about the  
[22] brochure, the prices that appeared in the brochure,  
[23] the inability to compare the monthly lease rates  
[24] with the purchase price.  
[25] Q: And just to sort of expedite it a little

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[1] bit, what I'm trying to do right now is just go  
[2] through paragraphs, since you've told me that to  
[3] identify the particular practices you believe were  
[4] unfair or misleading, you have to look at the total  
[5] report. I'm really just trying to get  
[6] identification which practices are listed, and  
[7] we'll go back and talk about specific ones later.  
[8] A: That's up to you.  
[9] Q: Anything other than the brochure in  
[10] paragraph 11?  
[11] A: I don't think so.  
[12] Q: Paragraph 12?  
[13] A: The lack of information, bill inserts,  
[14] AT&T's television advertisements. I specifically  
[15] cite to a bill insert provided by New Jersey Bell.  
[16] Q: Do you include that as an AT&T practice?  
[17] A: In the sense that AT&T could have provided  
[18] additional information and materials that in my  
[19] opinion should have been used by the local phone  
[20] companies as to the situation with regard to  
[21] telephone set equipment, but the brochure was not  
[22] issued by AT&T. It was issued by New Jersey Bell.  
[23] Q: But you list it because you think AT&T  
[24] could have provided New Jersey Bell with something  
[25] else to say?

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[1] A: They could have. And I am describing the  
[2] environment within which this series of  
[3] transactions occurred, and that is an important  
[4] aspect of it.  
[5] Q: And you said under paragraph 12 lack of  
[6] information, the television ads, bill inserts,  
[7] including the New Jersey Bell insert. What  
[8] specific lack of information -- Are you pointing to  
[9] some particular information, or are you stating  
[10] that as a general proposition there?  
[11] A: I'm talking about the lease purchases  
[12] issues. The first sentence of this paragraph links  
[13] the confusion with the breakup of AT&T and the lack  
[14] of understanding about the lease purchase decision  
[15] for the telephone.  
[16] Q: When you say lease purchase decision there,  
[17] what exactly do you mean?  
[18] A: The offer that was made in the December  
[19] 1983 brochure to continue leasing by doing nothing  
[20] or to purchase the telephone at a stated price.  
[21] Q: So you're referring to purchase of the  
[22] phone in the customer's home?  
[23] A: Yes.  
[24] Q: What I think you've called sale in place?  
[25] A: I think AT&T calls it that, but I believe

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[1] that's correct.  
[2] Q: All right.  
[3] A: Yes.  
[4] Q: Are you referring to an absence or lack of  
[5] information about other telephones available for  
[6] sale other than the one in the customer's home?  
[7] A: No. The focus of this information and my  
[8] concern is with the telephone that is subsequently  
[9] the subject of this lawsuit, which is the one that  
[10] was leased. So that's the one I'm talking about.  
[11] Q: Did you ever make any determination in your  
[12] work on this matter so far about the availability  
[13] of information about other telephones that could be  
[14] purchased? That was a bad question. Let me ask it  
[15] a different way.  
[16] Have you in the course of your work made  
[17] any determination of what information was available  
[18] either from AT&T, in the marketplace, other vendors  
[19] about telephones available for purchase?  
[20] A: I have seen references in this case file  
[21] that describe the scope of availability of  
[22] telephone sets for purchase from non-AT&T or  
[23] non- -- you know, private commercial stores. But I  
[24] did not do any particular analysis of that market.  
[25] Q: Does the availability of information about



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[1] those telephones or information concerning them  
[2] make any difference in your opinions?  
[3] A: No.  
[4] Q: What about with regard to information  
[5] provided by AT&T about phones available for  
[6] purchase other than the ones in place in lease  
[7] customers' homes?  
[8] A: No.  
[9] Q: Does that make any difference in your  
[10] opinions?  
[11] A: No.  
[12] Q: Why not?  
[13] A: Because those -- none of those phones were  
[14] the ones people were leasing. AT&T carefully  
[15] constructed its sale offers to its lease customers  
[16] not to overlap the type of phone that was being  
[17] leased and the one that was being marketed to. All  
[18] they did was market these high-end products that  
[19] were fairly expensive even at that time to people  
[20] who were leasing the same old rotary phone sets in  
[21] their home. They were trying to entice people to  
[22] spend more for phones, but they definitely were not  
[23] offering comparable telephones to the ones that  
[24] were leasing these plain old residential models.  
[25] Q: Did you make any determination or study of

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[1] what phones customers acquired when they stopped  
[2] leasing?  
[3] A: No.  
[4] Q: Why not?  
[5] A: I didn't have access to that information.  
[6] Q: It wasn't provided to you by Carr Korein?  
[7] A: It was not -- I did not ask for it. It was  
[8] not what I was interested in looking at. I was  
[9] looking at AT&T's interaction with people who were  
[10] leasing, not those who chose not to.  
[11] Q: So if customers who stopped leasing  
[12] obtained telephones elsewhere, either from AT&T or  
[13] other sources, that makes no difference in your  
[14] opinions?  
[15] A: No. Because what we're doing is talking  
[16] about how AT&T carefully constructed its  
[17] relationship with these people to prevent them from  
[18] leaving the lease base as long as possible, but  
[19] there's no question that millions left the lease  
[20] base. What AT&T was interested in doing was  
[21] prolonging that line of business as long as  
[22] possible.  
[23] Q: The customers who left the lease base,  
[24] where did they go to get telephones?  
[25] A: Presumably -- I do not personally know, but

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[1] I can sit here and surmise. Is that what you'd  
[2] like me to do, is surmise where they got them?  
[3] Q: Do you have a surmise?  
[4] A: I'm sure some of them were given phones as  
[5] gifts. I'm sure that they bought phones  
[6] eventually, some of them. And some of them ended  
[7] up with the phone that they had been leasing in a  
[8] kind of transaction in which they kept it and AT&T  
[9] charged them a small fee.  
[10] Q: In your work in this case, have you made  
[11] any effort to determine where lease customers went  
[12] for their telephones, how they obtained telephone  
[13] equipment when they stopped leasing?  
[14] A: No, I did not look at that.  
[15] Q: We stopped on paragraph --  
[16] A: Twelve.  
[17] Q: -- twelve. Looking at paragraph 13, are  
[18] there any specific practices listed in paragraph 13  
[19] that you can identify as supporting your statement  
[20] that AT&T used unfair and misleading practices?  
[21] A: Well, here the practice is that AT&T did a  
[22] lot of surveys of its own customer base, knew about  
[23] the confusion, knew that the primary reason for  
[24] leasing was inertia or habit and carefully  
[25] constructed their communications to continue that

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[1] ignorance or habit or inertia for as long as  
[2] possible.  
[3] Q: So the practices would be that they  
[4] conducted customer surveys that reported inertia  
[5] and confusion?  
[6] A: That's correct.  
[7] Q: And secondly, that they constructed  
[8] communications to continue both of those things?  
[9] A: Yes.  
[10] Q: What specific communications did they  
[11] construct to continue confusion and inertia?  
[12] A: Well, we can keep going here. I bet at the  
[13] end we'll have a list. Paragraph 14, is that okay?  
[14] Q: Would that be where we find some of those?  
[15] A: Yes.  
[16] Q: All right. And if you could go ahead and  
[17] identify them for me, please.  
[18] A: It's not what they did do. It's what they  
[19] didn't do. They never told me, and that's in  
[20] paragraph 14.  
[21] Q: Well, then, just so we're clear, let me go  
[22] back and ask: When you said that they carefully  
[23] constructed communications --  
[24] A: Right.  
[25] Q: -- to continue the confusion --

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[1] MR. MARKER: Let her finish the question.  
[2] Q: That's okay. She's good but it's hard.  
[3] A: Of course.  
[4] Q: When you stated that they carefully  
[5] constructed communications to continue inertia and  
[6] confusion on the part of customers, first, can you  
[7] identify for me what specific communications were  
[8] constructed toward that? And then the second  
[9] question I'll ask you in a minute is: What  
[10] communications did they fail to give? First, can  
[11] you identify any specific communications  
[12] constructed toward that end?  
[13] A: Yes. They constructed a billing format  
[14] that did not allow people to clearly and routinely  
[15] understand the nature of the bill, the purpose of  
[16] the bill, or the equipment that they were leasing.  
[17] At several points in the process, they examined  
[18] alternative bill formats, providing more  
[19] information, providing a breakdown of the leasing  
[20] rate, and so forth; and they always internally  
[21] declined to do it, because of the increase in  
[22] customer awareness that might result and the  
[23] erosion in the lease business that might result.  
[24] Q: Billing format would be one thing?  
[25] A: Billing format.

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[1] Q: What else?  
[2] A: The -- Well, what I would like to do is go  
[3] through my report and show you where I have  
[4] identified those things, but we're going to come  
[5] next to the lack of disclosure issue.  
[6] Q: All right. So we'll keep two separate  
[7] lists here. Billing format is one. What about  
[8] lack of disclosures -- Well, let me go back. Do  
[9] you include within construction of communications  
[10] to continue inertia and confusion communications  
[11] that weren't given?  
[12] A: Yes, I did in my own mind.  
[13] Q: And what do you include there?  
[14] A: The lack of any information to customers  
[15] beyond the December 1983 brochure as to their right  
[16] to purchase, the price for the purchasing of the  
[17] phone, or the disclosures of the terms of the  
[18] leasing contract.  
[19] Q: So one area where you believe that  
[20] communications were constructed to continue inertia  
[21] and confusion was not giving information beyond  
[22] December '83 about the right to purchase  
[23] sale-in-place telephones?  
[24] A: That's correct. The phone that was being  
[25] leased is the one I'm focusing on.

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[1] Q: All right. You're not referring to other  
[2] telephones available out in the marketplace?  
[3] A: Well, they didn't provide that either, but  
[4] one could clearly question whether they would have  
[5] a right to do that. I am focusing on the right  
[6] that they did in my opinion have, which is to more  
[7] repeatedly inform customers about the right to  
[8] purchase the lease telephone set for the period in  
[9] which it was available for sale.  
[10] Q: So you're focusing on the sale in place?  
[11] A: Right.  
[12] Q: When you say you could clearly question  
[13] their right to do that -- that is, provide  
[14] information on other telephones in the  
[15] marketplace -- why do you say that?  
[16] A: Well, I understand that AT&T is not  
[17] responsible for informing customers they can go to  
[18] Sears and get a phone. In other words, it wasn't  
[19] their obligation to provide locations and prices  
[20] and alternative models that people could get in the  
[21] marketplace and buy. I do think it was their  
[22] obligation to provide education as opposed to  
[23] marketing, which are two different things, about  
[24] what people's rights were and what they had an  
[25] obligation or right to do in and shortly after this

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[1] transition period in question.  
[2] Q: So if you don't believe it was AT&T's  
[3] responsibility to inform their lease customers they  
[4] could go to Sears and buy a telephone, what exactly  
[5] do you believe would have been appropriate for them  
[6] to say about other telephone equipment in  
[7] educational materials, for example?  
[8] A: To inform customers that the phone they  
[9] were leasing was available to buy and to repeat the  
[10] prices and to repeat the offer frequently during  
[11] the periods in question. And during the 1986  
[12] period when even though technically not required to  
[13] do so but clearly they did allow those few people  
[14] who found their way and demanded to buy it, they  
[15] allowed them to buy it.  
[16] Q: So when you're talking about educational  
[17] materials as far as telephone equipment --  
[18] A: Yes.  
[19] Q: -- telephone equipment options, you're  
[20] referring there to the right to buy the phone in  
[21] their home?  
[22] A: That's correct.  
[23] Q: As opposed to informing them about other  
[24] telephone equipment that was out in the  
[25] marketplace?

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111 A: Yes, in the sense that they certainly in my  
112 opinion had no obligation to describe what other  
113 kinds of equipment was available in the marketplace  
114 or where the different locations or prices of these  
115 products were. But I think they had the right to  
116 provide people with information about you have the  
117 right to purchase your own phone. You can purchase  
118 the one we've leased -- we are -- you know, you are  
119 now leasing from us; here's the price; here's what  
120 you're paying in monthly rate; it's your choice.  
121 Q: In fact, wasn't there, beginning of 1982  
122 forward, a lot of information out in the  
123 marketplace about other telephone providers?  
124 A: I don't know. They didn't get it from  
125 AT&T. I did not look at advertisements generally  
126 in the marketplace at that time.  
127 Q: Do you have any opinion as you sit here  
128 today about whether that information was widely  
129 available?  
130 A: I would not be able to characterize it.  
131 Q: Okay.  
132 A: I believe it existed. The extent of it,  
133 the frequency of it, the burgeoning nature of that  
134 business, I am unable to provide any factual  
135 information about that right at the moment.

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136 Q: And you've made no determination about that  
137 yourself in this case?  
138 A: No, I have not.  
139 Q: If that information was widely available to  
140 customers about equipment options out in the  
141 marketplace, would that make any difference in your  
142 opinions?  
143 A: No.  
144 Q: Do you know how long the sale-in-place  
145 offer was extended to lease customers?  
146 A: Well, there's some confusion in the  
147 materials about this. We're dealing with the  
148 period of time -- Perhaps understandably the  
149 documentation is not extensive. I mean, it is a  
150 time period that you are talking about in terms of  
151 AT&T's own record keeping that one could understand  
152 may not be totally complete. But in any case,  
153 based on my analysis of this record, the company  
154 was required by the FCC order to offer the sale in  
155 place of the leased telephone set to this customer  
156 until January 1, 1986.  
157 Q: Okay.  
158 A: I believe based on materials that I've seen  
159 that AT&T continued to allow that to occur fairly  
160 routinely after that date for some time period. It

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161 is also correct, I believe, based on my view of the  
162 bill materials and the internal memos, that  
163 customers were never informed about the expiration  
164 of that sale-in-place offer until very late in  
165 1987. And that occurred --  
166 Q: I'm sorry. 1987?  
167 A: '87, late '87. And that notification  
168 occurred fairly encrypted in my opinion, two- or  
169 three-sentence bill insert -- or bill message,  
170 printed bill message, and that was the extent of  
171 it.  
172 Q: Would you include that bill message about  
173 expiration of sale-in-place option within the list  
174 of practices that you believe were unfair and  
175 misleading?  
176 A: Yes.  
177 Q: Do you know -- Well, let me back up. So  
178 your understanding is that AT&T was required to  
179 offer sale in place of embedded-base phones by the  
180 FCC from January '84 up to January '86, correct?  
181 A: Yes.  
182 Q: They in fact offered it beyond that period?  
183 A: There is some evidence that indeed they  
184 did, yes.  
185 Q: Do you know the number of customers or did

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186 you review any information about the number of  
187 customers who in fact exercised sale in place,  
188 bought their phones that they had in their homes,  
189 in 1984?  
190 A: I am not sure if the information allows you  
191 to determine. In other words, I've seen quite a  
192 bit of information in the files about the erosion  
193 rates, the number of sets in place as it varied  
194 from year to year. I am now not sure that I have  
195 seen information about how many of the people who  
196 left the leasing arrangement did so because in fact  
197 they bought the phone or turned it in. I do not  
198 know the answer to that question.  
199 Q: Okay. Can we go ahead and mark this.  
200 (Defendants' Exhibit Alexander 6  
201 marked for identification.)  
202 I'm showing you what is marked as Exhibit  
203 6, Ms. Alexander. Please take a look and tell me  
204 when you've had a chance to review it. I'm not  
205 going to ask you about all the tiny numbers.  
206 A: Okay.  
207 Q: Okay. Have you had a chance to look at the  
208 document?  
209 A: In the sense I can see what it is. I  
210 haven't digested the numbers.



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111 Q: I'm not going to ask you about the numbers.  
112 A: Okay.  
113 Q: Is that a document that -- or collection of  
114 documents that you were provided in this case?  
115 A: It appears to be, yes.  
116 Q: And Bates numbers on there bear the legend  
117 BA40813, etc. That would indicate those are  
118 documents provided to you. Is that your  
119 understanding?  
120 A: Yes.  
121 Q: I just wanted to ask you about the first  
122 page. Do you recognize the handwritten notes  
123 there --  
124 A: Yes.  
125 Q: -- that begin SIP?  
126 A: Yes.  
127 Q: Whose are those?  
128 A: Mine.  
129 Q: And what does it say?  
130 A: SIP drops dramatically after February,  
131 March 1984.  
132 Q: And what did you mean by that?  
133 A: That the sale-in-place frequency drops  
134 dramatically after February and March of 1984.  
135 Q: Was that a conclusion that you recorded

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111 after reviewing the document?  
112 A: It must have been.  
113 Q: Okay. Looking at paragraph -- I think we  
114 left off at paragraph --  
115 A: Are we back in the document?  
116 Q: Yes. We're back in the document. We left  
117 off on paragraph 16 by my notes.  
118 A: Okay.  
119 Q: Listing practices that you determined were  
120 unfair or misleading, and looking at paragraph 16,  
121 can you identify any practices in that category?  
122 A: Well, this is part of the overall billing  
123 approach of AT&T, in that they issued quarterly  
124 bills to customers who had relatively low monthly  
125 bills, and the triggers here are described in this  
126 paragraph. And that practice, combined with the  
127 bill format, created an aura of lack of  
128 information; and because of that, it was misleading  
129 in my opinion.  
130 Q: So we add quarterly bills to the list?  
131 A: Not merely because they were quarterly, but  
132 quarterly and in the format that they were, I would  
133 link closely to that conclusion.  
134 Q: All right. Paragraph 17, what specific  
135 actions or practices can you identify there that

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111 you believe were misleading or unclear?  
112 A: I've listed them here, the lack of  
113 itemization.  
114 Q: Itemization?  
115 A: Uh-huh.  
116 Q: What else?  
117 A: The format of the bill, the disclosures on  
118 the bill.  
119 Q: You're referring to the AT&T references?  
120 Are we not looking at the same paragraph 17?  
121 A: Yes, we are. We're looking at the emphasis  
122 on service, the peace of mind, the bill messages  
123 and inserts which market AT&T long-distance  
124 services, the general impression being given that  
125 there was a connection between telephone service  
126 and the lease bill that was coming to the customer,  
127 the lack of descriptions of the product, the  
128 abbreviations about how the products were  
129 identified at the time of price increases. All of  
130 the paragraph as a whole, I think, describes the  
131 concerns that I had -- or have.  
132 Q: And paragraph 18 we've looked at in  
133 connection with your assessment that prices were  
134 unconscionable. Any marketing or communication  
135 practices that you would identify from that

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111 paragraph?  
112 A: I don't think this paragraph addresses  
113 marketing.  
114 Q: All right. Paragraph 19, are there any  
115 practices that you identify -- can identify in that  
116 paragraph that you believe were unfair or  
117 misleading?  
118 A: This paragraph describes a lack of  
119 educational materials and a description of the  
120 types of communications that were provided which in  
121 my opinion were designed to allow those who were  
122 motivated by inertia to continue to be so.  
123 Q: Which specific communications are you  
124 referring to there?  
125 A: The bill inserts, the bill format, the  
126 descriptions on the bill or lack thereof, the  
127 marketing approach.  
128 Q: What do you mean when you say marketing  
129 approach?  
130 A: The making sure that customers who were  
131 leasing telephone sets were not provided bill  
132 inserts for comparable-purchase telephones from  
133 AT&T but rather were constantly urged to consider  
134 higher-end or technologically advanced or upgrades  
135 to the phone that they already had.



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[1] Q: Do you have an opinion on why the  
[2] company -- Well, let me back up. Is your  
[3] determination from looking at the document that the  
[4] company did not provide bill inserts promoting  
[5] comparable-purchase phones?  
[6] A: That's correct.  
[7] Q: Do you have an opinion on why they did not?  
[8] A: I believe AT&T's own internal documents  
[9] make it clear that they didn't want to provide the  
[10] customers with the option to see the purchase price  
[11] of a comparable phone to the one they were paying  
[12] the leased rates to.  
[13] Q: Was there concern that the customer might  
[14] view that as a reasonable substitute to what they  
[15] were leasing and buy that phone instead?  
[16] A: Yes, I believe that's the case.  
[17] Q: All right. Looking at paragraph 12 (sic),  
[18] what practices would you identify there, if any,  
[19] that you believe were unfair or misleading?  
[20] A: This paragraph is primarily a description  
[21] of AT&T's dominant position in the leased telephone  
[22] market for residential customers and how this  
[23] market power and the fact that it got all of its  
[24] customers by default and through this negative  
[25] option approach set in motion the economics that

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[1] led AT&T to set its prices in a way that is not  
[2] reflective of a competitive market for leasing,  
[3] because there was no competitor to the leasing of  
[4] the phone.  
[5] Q: Okay. Let me just group paragraphs 21, 22,  
[6] and 23 together, because then I believe we get into  
[7] another area.  
[8] A: Okay.  
[9] Q: Looking at those three, can you identify  
[10] for me any specific practices that you base your  
[11] conclusion that AT&T engaged in unfair and  
[12] misleading practices on?  
[13] A: The fact that the company knew that it's  
[14] customers were leasing due to inertia and habit,  
[15] that many did not know why they leased, many leased  
[16] for passive reasons. All of that market research  
[17] led to decisions about not communicating certain  
[18] things about educational rights and opportunities  
[19] and led to the approach not disturbing that inertia  
[20] or habit as much as they could do so.  
[21] Q: And you've described in your list of  
[22] practices thus far various things that you believe  
[23] either were given in the way of communications or  
[24] not given as a result of that market research, and  
[25] these -- In these paragraphs, is there anything in

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[1] addition that you would identify as an actual  
[2] communication or failure to communicate that we  
[3] haven't already addressed?  
[4] A: I think we're coming up to more.  
[5] Q: Well, focusing on those paragraphs you were  
[6] looking at --  
[7] A: Right.  
[8] Q: -- so we're clear on --  
[9] A: Oh, with respect to paragraphs 21, 22, 23,  
[10] do I have anything more than what I wrote in  
[11] paragraphs 21, 22, and 23?  
[12] Q: Uh-huh.  
[13] A: No, I don't have anything more than what I  
[14] wrote in those paragraphs.  
[15] Q: My question is different.  
[16] A: Okay.  
[17] Q: In those paragraphs you just told me that  
[18] the practices were having consumer research that  
[19] alerted AT&T to inertia and habit, and that led to  
[20] decisions about what to communicate or not to  
[21] communicate. What I'm trying to determine is if  
[22] there are any specific communications or  
[23] withholding of communications other than what we've  
[24] already addressed that you can point to in those  
[25] paragraphs.

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[1] A: In those paragraphs?  
[2] Q: Yes.  
[3] A: I don't think so, but let me look quickly  
[4] one more time. In paragraph 23, I start -- I  
[5] reference the exhortations by AT&T to its phone  
[6] center employees to conduct a SAVE lease because of  
[7] a profitability with regard to attaining a lease,  
[8] and I would add communications with customers who  
[9] called their phone centers to question, complain,  
[10] or discuss leasing as another method by which AT&T  
[11] did not provide educational information and  
[12] structured their communications so as to keep  
[13] people in a leasing mode for as long as possible.  
[14] Q: In paragraph 24, you discuss what you say  
[15] AT&T efforts to structure its lease program to  
[16] avoid state rent-to-own legislation and federal  
[17] consumer leasing legislation. Do you include that  
[18] as a practice that you believe was unfair or  
[19] misleading?  
[20] A: Yes.  
[21] Q: In paragraph 25, you make reference to  
[22] AT&T's business disclosures and bill inserts being  
[23] designed to reinforce the concept of negative  
[24] option approach and avoid shaking the inertia tree.  
[25] Do you see that?

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111 A: Yes, I do.  
121 Q: Other than the bill inserts that you've  
131 already referenced and the alleged failure to  
141 undertake educational programs that you've already  
151 referenced and the SAVE programs, all of which are  
161 listed here, is there any other practice that you  
171 would identify from this paragraph?  
181 A: No. Those are the practices identified in  
191 this paragraph, yes.  
201 Q: All right. Twenty-six makes reference to  
211 SAVE efforts?  
221 A: That's correct.  
231 Q: Paragraphs 27 and 28 refer to six  
241 guarantees which you've described as being in the  
251 nature of the leasing services. Do you include  
261 those as the content within those two paragraphs as  
271 being practices you believe were misleading?  
281 A: I describe the illusory nature of these  
291 services and for that reason did not -- believe  
301 they did not provide any real value to people, and  
311 again they were designed to make people feel  
321 comfortable with a service that in many cases  
331 people did not understand what their rights were.  
341 Q: And looking at paragraph 28 -- Well, we  
351 already addressed that. Twenty-nine --

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111 A: Yeah. Twenty-eight has to do with hard  
121 wire and party line phones which were -- physically  
131 had to be altered in some way in order to leave the  
141 lease arrangement and take advantage of an  
151 alternative telephone, and they were particularly  
161 hard wired, if you were, to AT&T's program because  
171 of that fact.  
181 Q: Your statements regarding hard wired and  
191 party line customers in paragraph 28, do you  
201 include those as misleading and unfair practices?  
211 A: Yes. Not the fact of the phones, but  
221 AT&T's response to those situations.  
231 Q: Okay.  
241 A: And its education of customers and its  
251 treatment of those who in order to transfer the  
261 hard wire to a modular phone had to make use of a  
271 confusing conversion kit.  
281 Q: Looking at paragraphs 29 through 31 and  
291 just reviewing those, it appears we've already  
301 covered a lot of that material in your list of  
311 practices that you believe were unfair or  
321 misleading. Would you please review those and tell  
331 me if there's any additional practice that you  
341 would list that we haven't already addressed.  
351 A: Yes, I will review them. Well, paragraph

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111 31 is the issue of the content and delayed issuance  
121 of the so-called lease contract which first  
131 occurred in 1993.  
141 Q: And we have that listed, I believe. Is  
151 that the lease contract that you mentioned earlier  
161 as coming out in 1993?  
171 A: I believe so.  
181 Q: All right. I'm really just looking for  
191 anything that we haven't already addressed.  
201 A: Well, since you're making the list, I'm not  
211 sure what you call already addressed.  
221 Q: I'm really just referring to those things  
231 you've previously listed for me.  
241 A: Well, the list is in my report. You're  
251 asking me to describe what's already down here in  
261 my report, and I'm trying to be responsive to that.  
271 Q: Anything else you'd identify up through  
281 paragraph 32?  
291 A: Through paragraph 32?  
301 Q: Uh-huh.  
311 A: Okay. Let me look at 32, please.  
321 Paragraph 32 raises the issue of a way in which  
331 AT&T classified all of its lease customers  
341 according to demographic profiles. They did this  
351 at various times during the time period in

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111 question. But the point of the classification was  
121 to structure communications, lease offers, and  
131 information to those customers based on these  
141 demographic profiles. And several of them were  
151 compilations of customers who were people who had  
161 not made any use of the phone guarantees, who were  
171 long-term embedded-base customers, who were over  
181 the passing of the years more elderly and more poor  
191 compared to their compatriots in the population  
201 generally; and the effort by AT&T to classify  
211 customers and deal with them in a way designed not  
221 to shake this inertia tree is further exemplified  
231 by this kind of demographic analysis that they did  
241 and the implementation of that analysis in their  
251 communications.  
261 Q: You mention in paragraph 32 the continuing  
271 leasers being disproportionately older and poorer.  
281 Do you see that statement?  
291 A: Yes.  
301 Q: What do you mean disproportionately older?  
311 A: Is there some English language problem  
321 here? Older, aged.  
331 Q: I'm just asking what you're referring to  
341 here. Are you talking about a particular age  
351 break-off, or are you just referring back to

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(1) something in the report? What do you intend by  
(2) that language?  
(3) A: I would like to turn to a number of  
(4) documents that AT&T had in its possession or that I  
(5) obtained in the context of this case, and most of  
(6) these surveys start in '86 but by the early 1990s.  
(7) If we're looking at pages 6 and 7 of the  
(8) spreadsheet, you find lease demographic analyses  
(9) that show the age of the customer base, the market  
(10) segmentation indicators that were being used. And  
(11) for example, those who were always and secure, a  
(12) categorization that AT&T devised, were older,  
(13) old-fashioned, hard wired, resistant to change,  
(14) leasing is something they have always done, and  
(15) they are not aware of any other options, quote.  
(16) Basic inertia, another group, older, traditional  
(17) values, very low involvement with phone, quote,  
(18) basically fell into leasing, unquote, ready to  
(19) leave, quote, one of these days, unquote. Those  
(20) kinds of categorizations were used to target their  
(21) marketing and their SAVE attempts.  
(22) Q: I'm not going to ask you to go through  
(23) every document.  
(24) A: Right.  
(25) Q: My question is simply whether that

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(1) terminology is something derived from documents you  
(2) looked at or if you attribute some other meaning to  
(3) it?  
(4) A: I am using the words that AT&T used in its  
(5) own documents.  
(6) Q: You make reference near the end of your  
(7) report, I believe in the conclusions, paragraph  
(8) 40 --  
(9) A: At 40?  
(10) Q: Yes. -- to elderly customers. You say,  
(11) AT&T's conduct was particularly unconscionable with  
(12) respect to its elderly customers.  
(13) A: Yes.  
(14) Q: How do you define elderly in your opinion  
(15) there?  
(16) A: In this case I think we're talking about  
(17) those who are over 55 or 60. AARP membership is  
(18) typically used as a segue for that. A variety of  
(19) these surveys used, I believe, 55 plus as a way to  
(20) measure, you know, various age brackets of AT&T's  
(21) customers; and I would classify anyone over 55 as  
(22) elderly for the purposes of this.  
(23) Q: Do you know if you're drawing this  
(24) distinction between the AT&T documents that you've  
(25) referenced here on your flowchart or, you know,

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(1) other experience you have in demographics? I'm  
(2) trying to understand when you use the term elderly  
(3) what exactly you mean, and if I understand, you  
(4) look at an age barrier of like 55 or 60, whatever  
(5) is AARP membership criteria.  
(6) A: That is typically the one that is used,  
(7) either in the law, and some state statutes refer to  
(8) those who are elderly and define it as a particular  
(9) age. Others like AT&T use demographic surveys, and  
(10) I typically see the break-off at 55 or 60.  
(11) Q: My question is a little different. It's:  
(12) What do you mean when you use that term in your  
(13) opinion here?  
(14) A: I mean 55 or 60.  
(15) Q: Which is it?  
(16) A: Oh, I'm sorry.  
(17) Q: In other words, is there a --  
(18) A: I didn't --  
(19) Q: Define --  
(20) A: I did not mean to be scientific or  
(21) definitive about that. I am referring to AT&T's  
(22) description of the word elderly as well as, you  
(23) know, consumer statutes which often make reference  
(24) to the elderly and define it, and they define it as  
(25) in some cases 55 and in other cases as 60. In my

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(1) own mind, I did not make a definitive distinction  
(2) between 55 or 60.  
(3) Q: So when you conclude that AT&T's conduct  
(4) was particularly unconscionable with respect to  
(5) elderly customers --  
(6) A: Right.  
(7) Q: -- you're looking at an age break-off of  
(8) age 55 or 60?  
(9) A: That's correct.  
(10) Q: In your opinions, is there any factor other  
(11) than age in determining whether someone would be  
(12) included in that elderly group?  
(13) A: No.  
(14) Q: Purely age?  
(15) A: For purposes of referring to people as  
(16) elderly, yes.  
(17) Q: So that anyone over that age barrier is  
(18) elderly in your classification here?  
(19) A: Yes.  
(20) Q: Is it your opinion that special consumer  
(21) protections should be extended to persons over that  
(22) age mark?  
(23) A: It is not a matter of my opinion. It's a  
(24) matter of what the law says, which is in many  
(25) states that they deserve particular remedies, if



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[1] people target the elderly as part of a scheme that  
[2] is otherwise either fraudulent or unfair or  
[3] deceptive.  
[4] Q: In this particular case, do you believe  
[5] that customers over 55 or 60 who were lease  
[6] customers were entitled to special protections?  
[7] A: I think because AT&T found that those who  
[8] were involved in the embedded-base leasers by the  
[9] mid-1990s had significant demographic  
[10] characteristics that AT&T identify, one of which  
[11] was their age, that that should have resulted in a  
[12] red flag to AT&T to do more in the way of customer  
[13] education aimed at the needs and understandings and  
[14] background of that particular group.  
[15] Q: Are there any particular practices that you  
[16] identify -- Well, let me strike that and ask: What  
[17] specifically did AT&T do to target the elderly, if  
[18] anything, in your opinion?  
[19] A: It constructed marketing and SAVE programs  
[20] designed to retain them as lease customers and keep  
[21] them in ignorance of their rights and the true cost  
[22] of the phone and how that hard-wired phone could be  
[23] converted or how to convert it in an easy way for  
[24] many years.  
[25] Q: Did those same practices apply to

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[1] nonelderly customers?  
[2] A: In many cases they did.  
[3] Q: What's your basis for saying that those  
[4] were targeted toward the elderly?  
[5] A: Because AT&T did demographic studies that  
[6] identified the particular subgroups of its  
[7] embedded-base customers, some of which were  
[8] characterized as being more likely than not to be  
[9] elderly. And there are -- As a result AT&T could  
[10] have and should have directed communications  
[11] perhaps through groups that normally communicated  
[12] with such customers or targeted its advertising to  
[13] appeal to those customers in an educational sense  
[14] and devised programs that emphasized disclosures  
[15] that would be relevant to what their particular  
[16] needs were in this era.  
[17] Q: Okay. You indicated AT&T did demographic  
[18] studies that showed them certain elderly segments  
[19] of their lease population, correct?  
[20] A: Yes.  
[21] Q: I'm sure you're aware that not every piece  
[22] of market research results in some marketing  
[23] practice or implementation, right?  
[24] A: I don't -- I'm sorry. I didn't understand  
[25] that question.

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[1] Q: Sure. I'm assuming that you're aware and  
[2] you may not be but that not every piece of market  
[3] research causes some particular marketing action or  
[4] inaction to be taken, not everything reaches  
[5] implementation?  
[6] A: I suppose that's possible, yes.  
[7] Q: So the market research itself in your mind  
[8] was simply a red flag to AT&T?  
[9] A: Well, in this case, they categorized these  
[10] people in their computer based on these  
[11] categorizations. There's no lack of -- of -- of  
[12] linkage here between the marketing research and the  
[13] implementation of it. That's not what's happened  
[14] in this case.  
[15] Q: Right.  
[16] A: This is directly linked to AT&T's efforts  
[17] to communicate with its customers.  
[18] Q: And so my question then would be: What  
[19] specific communications, marketing practices did  
[20] AT&T use for elderly customers that were not used  
[21] for others?  
[22] A: Those documents that I cited describe how  
[23] to communicate with each one of these demographic  
[24] segments to SAVE lease. Certain messages were  
[25] emphasized; certain disclosures were either made or

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[1] not made, depending what segment you fell into.  
[2] There were training materials devised to implement  
[3] these demographic segments, and I don't have them  
[4] in front of me. But believe me, they were clearly  
[5] linked to the category that the customer was found  
[6] to be in.  
[7] Q: And just so I'm clear, when you say these  
[8] demographic categories, you're talking about the  
[9] always and secure and the other ones that you've  
[10] given me as examples?  
[11] A: Yes.  
[12] Q: And it's your testimony that information  
[13] about those categories was put on representatives'  
[14] computers?  
[15] A: Yes.  
[16] Q: Other than that, are you aware of any other  
[17] specific marketing communications and practices  
[18] that were used for elderly customers as you've  
[19] defined that but not for others?  
[20] A: What more direct link could we have? No,  
[21] I'm not aware of any other.  
[22] Q: I'm just asking.  
[23] A: I'm sorry if I --  
[24] Q: I'm trying to make sure that I have an  
[25] exhaustive list of anything else you would give me



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(1) there.

(2) A: There may be additional marketing -- There  
(3) may be additional efforts to have done this prior  
(4) to 1993. In fact, I think there were, and I think  
(5) some of them are listed in here; but that one is  
(6) about the most graphic example that I can provide  
(7) you.

(8) Q: Okay. So what I'm asking for as you sit  
(9) here today and tell me that AT&T had marketing  
(10) efforts targeted to the elderly, other than that  
(11) example, can you identify any communication or  
(12) marketing practice that was used for elderly  
(13) customers but not others?

(14) A: I believe there were.

(15) Q: Okay.

(16) A: And I believe that those are reflected in  
(17) earlier versions of this same demographic study.  
(18) There were other versions of this that had been  
(19) tried in the past by AT&T, coding the computer,  
(20) doing bill inserts, and marketing based on the  
(21) results of these types of demographic analyses.

(22) Q: Can you identify for me any bill insert  
(23) that was provided only to elderly customers?

(24) A: No.

(25) Q: Can you identify for me any bill

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(1) don't exist anymore.

(2) Q: Well, I'm just asking if you do know.

(3) A: No, I don't.

(4) Q: Going back for a second to summary of  
(5) opinions, we've talked about two of the categories  
(6) that take up a large part of your report, what you  
(7) claim to be unconscionable pricing and then a  
(8) second category in paragraph 3 --

(9) A: I think I'm ready for a break.

(10) Q: Yeah, that's fine.

(11) A: I'm sorry.

(12) MR. MARKER: Do you want to finish your  
(13) question?

(14) MS. BAKEWELL: No. It's a good time for me  
(15) to break.

(16) (Off the record.)

(17) Before the break, Ms. Alexander, we had  
(18) gone through the various paragraphs of your report  
(19) and listed out, identified particular practices  
(20) that you point to in support of your conclusion  
(21) that AT&T used unfair and misleading practices. Is  
(22) that the point you recall us leaving off?

(23) A: Well, you made a list, and I basically told  
(24) you what was already in my report on a  
(25) paragraph-by-paragraph basis.

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(1) communication, a print message, any other kind of  
(2) inclusion in the bill that went only to elderly  
(3) customers?

(4) A: Offhand I cannot.

(5) Q: So other than the demographics you've  
(6) already identified with the examples of always and  
(7) secure and other things of what that nature --

(8) A: Right.

(9) Q: -- can you give me any other examples of  
(10) communications or marketing efforts that only went  
(11) to elderly customers?

(12) A: I am not aware of any AT&T alterations of  
(13) bill messages that was done by age of the customer.  
(14) I think I've described marketing and communications  
(15) and SAVE attempts that were based on knowledge of  
(16) various demographics in the embedded-base customer  
(17) base.

(18) Q: Do you know if in fact the demographic  
(19) information you identified for elderly citizens  
(20) such as always and secure was in fact used by the  
(21) representatives?

(22) A: Well, they were being trained to use it. I  
(23) am only presuming that they did.

(24) Q: So you don't know if they were?

(25) A: How could I know? I wasn't there and they

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(1) MR. MARKER: You said practices that are  
(2) unfair and misleading. You didn't mean to leave  
(3) out unconscionable, too? You went through both,  
(4) right?

(5) Q: Let me distinguish then. We talked this  
(6) morning about and early this afternoon about  
(7) pricing which your opinion concludes was  
(8) unconscionable; is that fair?

(9) A: Yes.

(10) Q: And then before the break, we had been  
(11) talking about another opinion that you state in  
(12) your report in paragraph 3, the summary opinion  
(13) that AT&T used unfair and misleading practices in  
(14) its communications, marketing efforts, and so  
(15) forth. Is that fair?

(16) A: Yes.

(17) Q: Do you make any distinction in your opinion  
(18) between the terminology unconscionable and unfair  
(19) and misleading?

(20) A: I'm thinking back to my own use of the term  
(21) unconscionable, which typically is accompanied by  
(22) description of the price issue and the unfair and  
(23) deceptive acts and practices which are typically  
(24) including the unconscionable price as well as the  
(25) communications and disclosure issue. So I think

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[1] that's the best way to think about it.

[2] Q: The reason I ask the question is, having  
[3] gone through the report in detail and as you, of  
[4] course, have, too, I find that in reference to  
[5] pricing you use the term unconscionable and  
[6] exorbitant as well. But unconscionable. You don't  
[7] use that same terminology with regard to the  
[8] marketing, communication, and practices. Instead  
[9] you refer to those as being unfair and misleading.

[10] And so that leads me to ask if those are  
[11] different -- What causes you to use the different  
[12] terminology in stating your opinions?

[13] A: Unfair and -- All of these terms are common  
[14] to the whole field of consumer protection. The  
[15] unconscionable pricing issue is used in the --  
[16] mostly in the law and in the literature about price  
[17] and contract interactions. I don't think there is  
[18] a hard-and-fast distinction between these terms,  
[19] but I think that I have in fact used the terms  
[20] unconscionable and exorbitant mostly when talking  
[21] about price and unfair and deceptive, mostly in  
[22] talking about communications in marketing and  
[23] billing and so forth. But --

[24] Q: I'm trying to --

[25] A: -- in many cases --

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[1] Q: Go ahead.

[2] A: No. I was just going to say I'm not sure  
[3] that distinction has a bright line attached to it;  
[4] and in the law, for example, I know of examples of  
[5] unconscionable conduct as well as unconscionable  
[6] price. So in this case I don't think that there's  
[7] too much that should be read into those  
[8] distinctions.

[9] Q: As you've explained previously and  
[10] including your own measure for unconscionability,  
[11] that is sometimes a term of art or a term that has  
[12] a common understanding or meaning in the law; and  
[13] you stated your standards or your measures for  
[14] determining prices were unconscionable. Have you  
[15] reached any conclusion as far as whether the  
[16] marketing and communication practices that you  
[17] mention here are unconscionable? And I ask that  
[18] because that's not the language you use with regard  
[19] to that.

[20] A: I'd like to stick with the language in  
[21] paragraph 40 in which I do use the word  
[22] unconscionable with respect to AT&T's conduct with  
[23] respect to its elderly customers. So I have used  
[24] the term in a nonprice, particularly with a  
[25] nonprice scenario.

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[1] Q: All right. So paragraph 40, as you point  
[2] out, says, AT&T's conduct was particularly  
[3] unconscionable with regard to elderly customers,  
[4] correct?

[5] A: That's what it says, yes.

[6] Q: And we talked before the break about  
[7] particular practices that you base that statement  
[8] upon.

[9] A: Uh-huh.

[10] Q: What standard or measure of  
[11] unconscionability do you rely upon for your  
[12] conclusion in paragraph 40, your conclusion with  
[13] unconscionability? I should clarify that.

[14] A: Unfair, taking advantage of, knew and took  
[15] advantage of, having extraordinary market power and  
[16] taking advantage of the market power, all of those  
[17] aspects would form my judgment as to the use of  
[18] that particular word in this paragraph.

[19] Q: That would be the basis for you stating the  
[20] term unconscionable in paragraph 40?

[21] A: Right.

[22] Q: Is there anything that you can point to as  
[23] a standard that you rely upon other than those  
[24] terms, anything outside of the description you've  
[25] given for concluding that there was unconscionable

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[1] conduct in paragraph 40?

[2] A: I think that I've tried to be as inclusive  
[3] as I can with those terms.

[4] Q: So there wouldn't be anything else that  
[5] you'd point to?

[6] A: Outside of what I've already written in my  
[7] report and the additional information you've asked  
[8] me right here, no.

[9] Q: Let me go back so we can clarify and have a  
[10] clean answer on the record. When I asked you to  
[11] explain the basis for your conclusion in paragraph  
[12] 40 that conduct was unconscionable, you  
[13] described --

[14] A: Wait a minute. That was not the question.  
[15] MR. MARKER: Excuse me. Let her finish her  
[16] question, and then you answer.

[17] Q: If there was any confusion, let me ask that  
[18] direct question then.

[19] A: Okay.

[20] Q: What's the basis for your conclusion in  
[21] paragraph 40 that the conduct was unconscionable?

[22] A: I have summarized the reasons why I made  
[23] that statement in paragraph 40 and described all  
[24] the way through this document conduct that was  
[25] unfair and deceptive and in my opinion took

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[1] advantage of particularly its relationship with its  
[2] growing group of elderly customers who are  
[3] embedded-base leasers. In my opinion that conduct  
[4] as a whole can be characterized as unconscionable.

[5] Q: And we talked before the break about any  
[6] specific practices that went to the elderly and not  
[7] other customers, and you identified for me what you  
[8] could point to there, correct?

[9] A: Yes.

[10] Q: Now, going back so we can make sure we're  
[11] clear, as far as any standard on measure of  
[12] unconscionability that you rely on in your  
[13] statement in paragraph 40, I understood you to say  
[14] that you look to taking advantage of, unfairness,  
[15] extraordinary market power. Anything else that you  
[16] would include as a standard or measure for your  
[17] determination of unconscionability in paragraph 40?

[18] A: I did answer that question, and I don't  
[19] have anything to add to that answer.

[20] Q: Quick question and maybe we'll wrap up some  
[21] of the conclusionary or the summary opinions on  
[22] practices. We talked about sale in place and how  
[23] your opinions include practices related to sale in  
[24] place of phones in people's homes. Do you recall  
[25] that testimony?

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[1] A: Yes.

[2] Q: Do you have an understanding of what's  
[3] meant by sale from inventory or SFI?

[4] A: As I understand it, that was the marketing  
[5] of phones that were not being leased by customers  
[6] but that were in AT&T's inventory to people who  
[7] wanted to buy a telephone after the expiration of  
[8] the sale-in-place offer.

[9] Q: Do you know which telephone models were  
[10] included in the sale-from-inventory offer?

[11] A: I'm sure that I have seen that information.  
[12] Offhand I do not recall it.

[13] Q: Is that information you ever asked to be  
[14] provided in relation to your opinions here?

[15] A: I think that I have documents in those  
[16] files that would answer that question, but I  
[17] offhand can't think what document that is.

[18] Q: Well, maybe here's a better way for me to  
[19] ask the question: Is any information related to  
[20] sale-from-inventory offers by AT&T something that  
[21] your opinions are based upon?

[22] A: Not to any significant degree, no. I did  
[23] not focus on that type of transaction in  
[24] particular.

[25] Q: And you didn't make an effort to determine

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[1] what sale-from-inventory offers might have been  
[2] provided by AT&T to customers?

[3] A: I recall being aware at some point in this  
[4] process of that information. All I'm telling you  
[5] is that offhand I do not now recall it in any  
[6] specificity.

[7] Q: If Big Six telephone models, same models  
[8] that were provided that -- that we've talked about  
[9] as being part of the embedded base that you've  
[10] addressed in your report here, if those Big Six  
[11] models were offered on a sale-from-inventory basis  
[12] and promoted on that basis, would that make any  
[13] difference in your opinion?

[14] A: Difference in what?

[15] Q: In any of your opinions.

[16] A: In any of my opinions? I don't believe so,  
[17] because I'm quite sure that they were not promoting  
[18] the same models as sales from inventory to the  
[19] people who were leasing these phones in any  
[20] significant marketing effort, because I saw boxes  
[21] and boxes and descriptions of all the bill inserts  
[22] that went to their leasing customers; and that  
[23] wasn't in there.

[24] Q: Let me just have you identify for a moment,  
[25] since we're talking about marketing efforts, what

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[1] marketing efforts you became aware of in your  
[2] review of materials and your research to develop  
[3] your opinions in this case. We've talked about  
[4] bill inserts and bill communications. Would that  
[5] be one?

[6] A: Definitely.

[7] Q: We've talked about communications with a  
[8] service representative if a customer calls.

[9] A: Yeah.

[10] Q: Would that be included?

[11] A: Yes.

[12] Q: We've talked about television ads.

[13] A: Yes.

[14] Q: Would that be included?

[15] A: Yes.

[16] Q: And I think we talked about the brochure  
[17] that was sent out in 1983. Do you include that as  
[18] a marketing material?

[19] A: I think it was intended as an educational  
[20] material, had significant defects in it that had  
[21] marketing implications, but I think it was designed  
[22] or intended to be of an educational nature at that  
[23] time.

[24] Q: Other than these things that we've just  
[25] listed, are there any other marketing materials or



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11 customer information provided by AT&T related to  
12 telephone leasing that you've seen or you're aware  
13 of?

14 A: I'm trying to think if there was any other  
15 category in which marketing materials could  
16 conceivably fall other than the ones we've just  
17 named. But barring the creation of a new category,  
18 I don't -- I think that I've seen all that was  
19 available in the context of this proceeding.

20 Q: And in the list that we just went through,  
21 bill communications, the brochure, television ads,  
22 communications when a customer would call with a  
23 live representative, are you aware of any other  
24 marketing communications or efforts by AT&T related  
25 to the lease customers?

1 A: I don't think so. I mean, I looked  
2 obviously at the lease business plans which talked  
3 about how it would market, and all of those  
4 categories were the categories that they themselves  
5 decided that they would use to market their  
6 products.

7 Q: And since I've been using the term  
8 marketing, I guess I should clarify. Aside from  
9 marketing -- I understand that your position in  
10 this case is that AT&T primarily sent marketing

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11 materials, not informational materials; is that  
12 correct?

13 A: That is correct.

14 Q: Well, setting aside the marketing materials  
15 and we've talked about the categories you're aware  
16 of there, are there any informational materials  
17 that AT&T provided to customers that you're aware  
18 of other than the 1983 brochure?

19 A: Can you give me a time period within which  
20 you want me to give you a response to your  
21 question?

22 Q: Well, let's exclude the 1983 brochure.

23 A: Okay.

24 Q: And take it from 1/1/84 through whatever  
25 period you looked at documents, currently if it  
would include that.

1 A: And in that time period, did I see any  
2 informational or educational materials other than  
3 marketing materials?

4 Q: Uh-huh.

5 A: No.

6 Q: You mentioned a 1993 lease agreement that  
7 AT&T sent out to customers. Do you recall that?

8 A: Yes.

9 Q: Which side of the fence do you put that on,

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11 informational, educational, or marketing?

12 A: That document was designed to provide  
13 customers with an incredibly long overdue  
14 description of the transaction that they were  
15 involved with, and it was designed in a way that in  
16 my opinion furthered the notion of leasing. It was  
17 not an educational or informational brochure. It  
18 was a contract of adhesion issued by a company to  
19 people who had already been paying them for this  
20 product for seven years.

21 Q: So in answer to my question, was it  
22 marketing or was it informational/educational or  
23 neither?

24 A: I would put it more into the marketing  
25 category, no question.

1 Q: But I think based upon your description,  
2 you wouldn't see it as purely marketing?

3 A: That particular document was not trying to  
4 sell a new leasing product or sell a purchase of a  
5 phone, but it was definitely designed to reinforce  
6 the concept of leasing with its customers; and it  
7 was designed in that way.

8 Q: I'm looking for the spot in your report. I  
9 recall you stating that this was the first time  
10 that AT&T ever apprised customers or ever

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11 communicated to customers the terms and conditions  
12 of the lease offer. Maybe you'll have more luck at  
13 finding the specific statement in your report. I  
14 believe it's 31.

15 A: Yes.

16 Q: Is that your understanding; that the lease  
17 agreement sent out in 1993 was the first  
18 communication of terms and conditions of leasing to  
19 customers?

20 A: In the sense of calling it a lease contract  
21 with a formality of terms and conditions, yes,  
22 that's my understanding.

23 Q: With that qualifier, I'll ask what other  
24 expressions of terms and conditions of the lease  
25 offer, whether or not it was denominated as a  
contract, are you aware of?

1 A: I believe AT&T -- In fact I saw that AT&T  
2 promoted its lease guarantees prior to this date.

3 Q: Other than the lease guarantees, are you  
4 aware of any customer communications setting forth  
5 terms and conditions of the lease offer prior to  
6 the 1993 lease agreement that was mailed out?

7 A: I do not believe so.

8 Q: If you learned that there were such  
9 communications and such terms and conditions



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[1] communicated to customers, would that make any  
[2] difference in your opinions?  
[3] A: I would have to look at them and consider  
[4] that matter.  
[5] Q: So depending upon the content, it might?  
[6] A: I would want to leave an open mind to that  
[7] potential possibility, certainly.  
[8] Q: So possibly it would?  
[9] A: It's possible.  
[10] Q: Did you ask to be provided with copies of  
[11] all expressions of terms and conditions prior to  
[12] 1993?  
[13] A: AT&T was asked in discovery to provide all  
[14] of the contents of its bill inserts for the time  
[15] period in question here, and I asked to see all of  
[16] the information that was received in response to  
[17] that request; and I believe I did so.  
[18] Q: All right. You're talking about bill  
[19] inserts. Did you ask specifically for bill inserts  
[20] or any other expressions of terms and conditions?  
[21] A: Are you suggesting that there might have  
[22] been another method to have communicated terms and  
[23] conditions other than through the bill?  
[24] Q: Well, what I'm trying to do with your  
[25] answer, when you said bill inserts, I'm trying to

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[1] find out whether you asked for any and all  
[2] expressions of terms and conditions or  
[3] communications of terms and conditions to  
[4] customers, whether in bill insert form or any form.  
[5] A: I asked for all of the material that was  
[6] available to disclose the communications with -- by  
[7] AT&T with its customers during this time period,  
[8] with regard to the leasing and the embedded-base  
[9] customers who were leasing. There were other  
[10] communications that went to people who entered into  
[11] newly formed leases after 1986.  
[12] Q: And when you made that --  
[13] A: And that's not what we're talking about  
[14] here.  
[15] Q: And when you made that request, the only  
[16] thing you received was the six guarantees you've  
[17] mentioned and the 1993 contract?  
[18] A: Oh, I received boxes of materials.  
[19] Q: Let me go back so we're clear.  
[20] A: And they -- Most of them were marketing  
[21] products for leases or purchasing. Others of them  
[22] were promos of company image and, you know, AT&T  
[23] this Christmas what we're doing for customers.  
[24] Q: I'm not interested in everything in the  
[25] boxes.

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[1] A: But I looked at all of those.  
[2] Q: But I want to focus on anything that  
[3] communicated terms and conditions.  
[4] A: That's correct.  
[5] Q: Did you specifically ask give me anything  
[6] that is a communication of terms and conditions to  
[7] lease customers?  
[8] A: I asked the question much more broadly than  
[9] that, because I did not want to be limited to  
[10] looking at something that might be construed as  
[11] either a term and condition or not. I said -- And  
[12] I received, I believe, all of the communications  
[13] including any terms and conditions.  
[14] Q: When we talked about those practices that  
[15] you base your conclusion that AT&T engaged in --  
[16] Start that over. Bad grammar.  
[17] We talked about a variety of practices on  
[18] which you base your conclusion that AT&T engaged in  
[19] unfair and misleading communications and marketing  
[20] practices.  
[21] (Exit Mr. Bonacorsi.)  
[22] Do you believe that any of those particular  
[23] practices influenced customer behavior?  
[24] A: I'm sorry. You're going to have to ask the  
[25] question again.

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[1] Q: Sure. We talked about a number of  
[2] practices on which you base your conclusion that  
[3] AT&T engaged in misleading and unfair marketing,  
[4] communications, other practices. I'm not asking  
[5] you to replot that. I'm just stating that as a  
[6] predicate. What I want to ask you is whether you  
[7] have any understanding or knowledge whether those  
[8] practices actually resulted in any particular  
[9] consumer or customer behavior.  
[10] A: Well, a good deal of the practices were  
[11] designed to result in the customer doing nothing  
[12] and keeping as many people in the leasing mode as  
[13] possible. And so we know how many people did  
[14] nothing. I mean, we can track that sets in service  
[15] and erosion rates and so forth over a period of  
[16] time, and certainly AT&T intended that its  
[17] activities would have the result of slowing  
[18] erosion; and indeed it did. It appears to have  
[19] done so.  
[20] Q: And my question is a little different.  
[21] What I'm trying to determine is whether you have  
[22] been able to discern whether any of those  
[23] particular practices caused a customer to keep  
[24] leasing or to terminate a lease, to influence their  
[25] actual behavior.

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111 A: Well, we know that AT&T SAVE practices were  
121 designed to keep people leasing when they called up  
131 and wanted to talk about whether or not they should  
141 lease or what is the bill for, why am I getting  
151 this bill or whatever. So we have all kinds of  
161 training materials, transcripts, you know, and  
171 various documents which demonstrate that in fact  
181 that is exactly what they did do, is keep as many  
191 people leasing as possible. So beyond that, I'm  
201 not quite sure what you're asking me.

111 Q: Sure. I'm not asking you what were the  
121 communications or the marketing activities designed  
131 to do, planned to do, what was the plan or scheme  
141 behind that.

151 A: Yes.

161 Q: I'm asking if you've been able to determine  
171 whether in fact those activities caused any  
181 customer to stop leasing or continue leasing  
191 actually affected customer behavior.

201 A: I have deducted that in fact they did have  
211 that result by looking at the volume of business  
221 that was conducted over this time period and the --  
231 for example, the increase in erosion that occurred  
241 immediately after the bill became fully itemized in  
251 1996. But it certainly didn't cure by any means

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111 this long history of unfair and deceptive practice  
121 and kept the unconscionable pricing continuing.  
131 That was definitely an improvement in the approach,  
141 and it resulted in more people not leasing their  
151 phones. So there was a pretty clear correlation  
161 between AT&T's educational communications and the  
171 erosion rates that resulted from various activities  
181 they took.

191 Q: So with regard to the bill itemizations  
201 that took place in '95, '96 --

211 A: '96.

221 Q: Okay. '96. -- you've concluded or  
231 deducted that that led to an increase in erosion in  
241 that same year?

251 A: AT&T concluded that it did. They document  
111 that.

121 Q: And that's your conclusion as well?

131 A: I have no reason to doubt AT&T's own  
141 conclusion about that.

151 Q: So you base this statement on your  
161 understanding from documents provided by AT&T?

171 A: That's correct.

181 Q: Other than the itemization in 1996, can you  
191 point to any particular action or inaction by AT&T  
201 that caused customers to keep leasing or -- I'm

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111 asking that in a bad way. Let me try it again.

121 What I'm trying to determine is if you can  
131 quantify for me how many customers kept leasing or  
141 stopped leasing based on any of the particular  
151 practices you've identified.

161 A: Well, I would have no way of knowing that  
171 other than the review of AT&T's own documents about  
181 what it found out about what its customers were  
191 doing and how to halt erosion and what spurred it  
201 and so forth.

111 Q: I understand you've looked at AT&T  
121 documents, and that may form the basis for some of  
131 your opinions. If you can pinpoint something  
141 there, I would include that. Here's what I'm  
151 trying to ask you. Let's take an example.

161 A: Okay.

171 Q: You talked about AT&T not putting in  
181 educational materials.

191 A: Yes.

201 Q: All right. Instead using marketing  
211 materials. Can you tell me how many customers did  
221 not stop leasing, kept leasing, as a result of  
231 that?

241 A: Millions.

251 Q: What's your basis for saying that?

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111 A: Take a look at the difference between the  
121 erosion rate that occurred shortly after the  
131 educational material that did appear in 1983 and  
141 the erosion rate that dropped significantly in the  
151 late 1980s when AT&T adopted its strategy of not  
161 shaking the inertia tree.

171 Q: So it would be your position that using  
181 marketing materials instead of educational  
191 materials as you've described them led to lessened  
201 erosion, and the basis you point to is the  
211 difference in erosion rates that you see after the  
221 1983 brochure went out as opposed to later?

231 A: Yes.

241 Q: So you're relying upon the erosion charts  
251 that are within the documents?

111 A: In terms of tracking the numbers, yes.

121 Q: You also mentioned AT&T not offering sale  
131 in place after 1986 or '87, I believe you said.  
141 Can you point to me what the effect of that was in  
151 terms of number of customers continued leasing  
161 rather than terminating as a result of that?

171 A: No, because there's no way to look at one  
181 variable in the erosion rate and say, a-ha, that  
191 one little item there is the cause of this or that.  
201 I would look at all of the various pieces of the

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[1] conduct or lack of conduct in this time period to  
[2] point to the impact of AT&T's strategy.

[3] Q: Would the basis for you saying that AT&T's  
[4] strategy of trying to retain customers through its  
[5] marketing and communications have the desired  
[6] effect -- would your measure of that be the erosion  
[7] numbers?

[8] A: If by desired effect you mean did AT&T  
[9] construct this program to keep people as lease  
[10] customers and slow the erosion rate and did it have  
[11] that desired effect, in my opinion it appears to  
[12] have done so, yes.

[13] Q: My question is a little different. I  
[14] understand you to say that AT&T had these marketing  
[15] programs, communications designed to keep people  
[16] leasing; is that fair?

[17] A: Yes.

[18] Q: And I'm trying to determine whether you  
[19] have any basis to believe that those efforts in  
[20] fact influenced customer behavior at all, you know,  
[21] if there was a cause and effect between what we did  
[22] or didn't do, and I'm hearing you say that you base  
[23] that on erosion figures.

[24] A: Yes, I base it on erosion figures. I base  
[25] it on the customer complaints. I base it on the

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[1] as proof of that actual customer behavior?

[2] A: I think we've discussed them. The erosion  
[3] rate, the customer complaints, the demographic  
[4] material, and surveys.

[5] Q: And the erosion rates, you're referring to  
[6] the charts that are produced along with some of the  
[7] narrative descriptions of erosion numbers?

[8] A: Yes.

[9] Q: Complaints, how do you view the complaints  
[10] as evidence that customer behavior was affected by  
[11] AT&T's practices?

[12] A: Customers told AT&T their behavior was  
[13] affected by the didn't know they were leasing, and  
[14] the complaint records are full of people who called  
[15] and expressed dismay and concern about the  
[16] situation they were in. They were being billed for  
[17] a phone they claimed they were not aware that they  
[18] were leasing.

[19] Q: Is it your position that customer  
[20] complaints are evidence that any particular  
[21] practice kept people leasing?

[22] A: Yes. And any competitive business will  
[23] confirm that customer complaints are a crucial form  
[24] of communication about important matters that  
[25] should be analyzed, and that would affect the way

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[1] demographics that they were conducting, and they  
[2] knew that a whole bunch of people were not acting  
[3] as a result of lack of information. I base it on  
[4] all of the facts and documents that I've looked at  
[5] in this proceeding. I'm not sure that I can give  
[6] you a different answer than the one I've given.

[7] Q: Let me just come back and ask what I'm  
[8] trying to get at this way: Can you point to any  
[9] documentation, literature, other foundation to show  
[10] me where AT&T's marketing and communication  
[11] practices in fact caused people to keep leasing  
[12] rather than terminating?

[13] A: Are you asking me if I have a source for my  
[14] conclusion other than the documents that exist in  
[15] this discovery process?

[16] Q: Well, we'll take that one first. Do you  
[17] have any basis other than documents in the  
[18] discovery process?

[19] A: No.

[20] Q: And then what documents that you've  
[21] received from discovery would you base -- First of  
[22] all, is that your conclusion; that in fact AT&T  
[23] practices caused customers not to stop leasing?

[24] A: Yes.

[25] Q: And what do you point to in the documents

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[1] they conduct their business, conduct their  
[2] marketing, conduct their communications with  
[3] customers.

[4] Q: Based on your review of customer  
[5] complaints, what specific practices are indicated  
[6] as affecting customer behavior?

[7] A: Well, because we're talking about practices  
[8] that did not occur, the lack of the bill  
[9] itemization prior to 1996, the lack of educational  
[10] materials. Customers don't know what they didn't  
[11] get. But the fact patterns that they're describing  
[12] to AT&T are pretty classic description of people  
[13] who were confused and didn't understand the nature  
[14] of this transaction for many years.

[15] Q: And is it your opinion that if AT&T had  
[16] provided bill itemization, provided educational  
[17] materials of the type that you've described that  
[18] that would have made a difference in the erosion  
[19] numbers?

[20] MR. MARKER: Let me make sure that we  
[21] understand your question. Are you saying if AT&T  
[22] had done two things you identify in that question  
[23] and nothing else, would that alone have made a  
[24] difference in the erosion numbers? Is that your  
[25] question?



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11 Q: Sure. That's my question. I'm trying to  
12 key off what you just told me.  
13 A: I think that it would have made a  
14 difference, you know. I can't relate each of those  
15 changes and potentially others that I could have  
16 come up with as having a percentage impact of one  
17 particular kind or another on erosion. But  
18 increasing education, increasing disclosures,  
19 increasing communications about people's leasing,  
20 increasing the availability of sale in place, all  
21 of those things in my opinion would have had an  
22 impact on the erosion.  
23 Q: So you mentioned educational materials,  
24 increased disclosures, increased communications --  
25 Excuse me. I'm not articulating as well as I'd  
like to at this hour.  
A: Yes.  
Q: And further sale in place communications.  
If those had all been done, is it your opinion that  
would have affected lease erosion rates?  
A: AT&T certainly thought it would have  
affected lease erosion rates, and I have no reason  
to disagree with them about that.  
Q: So it's your opinion that it would have?  
A: It seems logical to me, yes.

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11 Q: So in answer to my question, yes, you  
12 believe that --  
13 A: I believe that's right, yes.  
14 Q: Can you tell me by how much?  
15 A: No.  
16 Q: Can you provide me with any quantification  
17 of that?  
18 A: No.  
19 Q: Have you made any attempt to determine what  
20 effect on the overall lease base in terms of number  
21 of customers or erosion those efforts would have  
22 had?  
23 A: No.  
24 Q: Do you have any basis to make that  
25 determination?  
A: No.  
Q: Going back to your report, Exhibit 2, we  
talked about practices and prices as set forth in  
your summary of opinions in paragraph 3. I want to  
focus for a minute on paragraph 5 that addresses  
your opinions regarding rent-to-own laws and  
consumer lease statutes. Do you see that?  
A: Yes.  
Q: What is your opinion with regard to  
rent-to-own laws as they might apply in this case?

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11 A: Are you asking for my legal conclusion?  
12 Q: I'm asking for your opinion as a proffered  
13 expert witness in the case.  
14 A: As AT&T knew, states were adapting a  
15 variety of provisions to address the so-called  
16 rent-to-own industry in the late '80s and early  
17 '90s. Typically those statutes on their face were  
18 applicable to transactions in which customers were  
19 leasing some sort of expensive consumer goods, like  
20 televisions or furniture or washing machines or  
21 whatever, and at the end of -- at some point then  
22 became -- then were provided the option to purchase  
23 the particular item in question.  
24 For the time period in '84, '85, that's  
25 exactly the kind of transaction that AT&T was in  
effect offering people. They were leasing the  
phone, but at some point in that two-year period,  
they would have had the option to buy the phone.  
After '86 there was no legal right to buy that  
particular phone. AT&T deliberately structured its  
disclosure so people would not have the right to  
legally obtain a phone, although as I indicated, in  
many cases they in fact ended up with exactly that  
type of transaction.  
But in any case, on the face of it, the

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11 transaction was structured in a way that did not  
12 technically trigger the rent-to-own business, and  
13 that's why I make the point here that there were  
14 underlying policy reasons for those laws that are  
15 applicable to the transaction.  
16 Q: Is it your opinion that AT&T is or was --  
17 Let me rephrase that since we're talking about a  
18 different entity right now. Is it your position  
19 that AT&T or Lucent is or was subject to the state  
20 rent-to-own legislation?  
21 A: I don't know, because each state's  
22 definitions and interpretations of that would have  
23 to be taken into account to give an answer to that  
24 question, and it sounds like a legal conclusion to  
25 me; and I wasn't asked to do that.  
Q: So do you have any basis as you sit here  
today to conclude that AT&T's lease business is or  
was subject to those rent-to-own laws?  
A: I think I've just answered that.  
Q: So as you sit here today, you're not  
telling me that they are?  
A: I am not making any statement about its  
business being subject to those laws.  
Q: That's all I'm trying to just find out, if  
it's your position that AT&T's lease business is or



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[1] ever has been subject to those laws.  
[2] A: I am not making a statement about that.  
[3] Q: You don't have an opinion on that as you  
[4] sit here today?  
[5] A: No.  
[6] Q: And you mention that during the period '84  
[7] through '85 that you believe the lease offering  
[8] would have been exactly the kind of thing that's  
[9] covered by that legislation?  
[10] A: There are significant similarities in the  
[11] kind of transaction that was available in '84 and  
[12] '85, yes.  
[13] Q: In 1984 and 1985, the lease offering was  
[14] still under the specific regulation of the FCC; is  
[15] that correct?  
[16] A: That's right.  
[17] Q: And we're talking about the transition  
[18] period?  
[19] A: That's right.  
[20] Q: Did the FCC continue to regulate either  
[21] directly or indirectly the lease business after  
[22] 1985?  
[23] MR. MARKER: I object to the vagueness of  
[24] directly or indirectly. I mean, if you can  
[25] understand it, you can answer, but I'm not sure

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[1] what she means.  
[2] A: Well, it's my understanding that the FCC  
[3] did not think that it was regulating and in fact  
[4] did not regulate leasing by AT&T after the  
[5] transition period. It was unlike the long-distance  
[6] charges by AT&T which were technically on file, for  
[7] example, at the FCC under the file rate doctrine;  
[8] the phone and leasing business was not. It was  
[9] totally detariffed.  
[10] Q: Do you have any opinion as to whether the  
[11] FCC had regulatory authority over the lease  
[12] business after 1985?  
[13] A: No, I don't have an opinion about that.  
[14] You mean could they have?  
[15] Q: Exactly.  
[16] A: I don't know.  
[17] Q: Was there any regulation of the lease  
[18] business, aside from the FCC, by state Public  
[19] Utility Commission, any other regulatory body or  
[20] regulatory forum, after 1985 in your opinion?  
[21] A: There was definitely no jurisdiction by  
[22] state Public Utilities Commissions. The FCC had  
[23] totally preempted the field, had prohibited the  
[24] states from any regulation of the price, turns of  
[25] service or any aspect of any of the telephone

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[1] equipment industry as a result of its decision in  
[2] the second Computer Inquiry. And no state  
[3] commission had any jurisdiction over AT&T until it  
[4] starts to offer tariff services subject to state  
[5] retail sale of telephone service pursuant to the  
[6] 1996 Telecommunications Act.  
[7] So no state commission had any jurisdiction  
[8] over AT&T or leasing by AT&T. Technically -- Not  
[9] technically, but the state's Attorney General had  
[10] various potential jurisdiction over their -- these  
[11] activities by virtue of their Consumer Fraud Acts  
[12] or Unfair and Deceptive Trade Acts.  
[13] Q: Other than regulatory authority of the  
[14] state Attorney General's offices, in your opinion  
[15] was there any other regulatory control or oversight  
[16] of the lease business after 1985?  
[17] A: Federal Trade Commission, Unfair Trade  
[18] Practices Act at the national level potentially.  
[19] It had the same type of jurisdiction that the  
[20] Attorney General did in the various states.  
[21] Q: Was that the authority under which the  
[22] FTC -- Was that the basis on which the FTC  
[23] entertained proceedings in 1995 and 1996 regarding  
[24] telephone leasing?  
[25] A: There was no -- To my knowledge there was

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[1] not a formal proceeding, but to the extent that  
[2] there was communications, discussions, and staff  
[3] involvement in looking into these issues, my  
[4] understanding is, yes, that that was the basis for  
[5] whatever informal review occurred.  
[6] Q: What about the FCC's involvement in 1995,  
[7] '96; under what authority did they do that?  
[8] A: I'm not sure they had any involvement.  
[9] Q: You're not aware of any FCC involvement in  
[10] that matter that you've just described in '95 and  
[11] '96?  
[12] A: There may very well have been informal  
[13] communications, but there was no formal proceeding  
[14] undertaken by the FCC.  
[15] Q: And do you have an opinion as to what  
[16] authority the FCC would have acted under in  
[17] addressing informal communications and any other  
[18] actions taken at that time period?  
[19] A: On what basis those informal communications  
[20] occurred?  
[21] Q: And any other actions by the FCC in 1995 or  
[22] '96.  
[23] A: There was no actions by the FCC. There was  
[24] some staff members who attended some meetings.  
[25] There may have been communications. I don't know

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111 about all of that. But there was no formal action.  
112 Q: I don't want to -- I don't intend to  
113 quarrel with you --  
114 A: Right.  
115 Q: -- at all about that.  
116 A: So I'm not sure what you're asking.  
117 Q: Whatever the activity by the FCC was in  
118 1995 and '96 -- And you understood that they were  
119 involved in conjunction with the FTC; is that  
120 right?  
121 A: I understand there were some memos or  
122 communications that occurred on an informal basis.  
123 Beyond that I'm not aware of any activity.  
124 Q: And do you have any knowledge as to the  
125 authority on which the FCC was involved at that  
126 point?  
127 MR. MARKER: Well, I object to foundation.  
128 If she doesn't know exactly what the FCC did, I  
129 don't see how she could tell you what authority  
130 they acted under.  
131 Q: Maybe she can't. I just want to see if  
132 that's something she's addressing here.  
133 A: I have not addressed it in any detail here,  
134 and I am not aware of any statutory authority other  
135 than the fact, of course, AT&T was subject to the

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111 FCC jurisdiction with regard to long-distance  
112 services and so had a long regulatory history  
113 obviously of communicating with the FCC, but I'm  
114 not aware of any statutory authority for the  
115 leasing business. I'm sorry.  
116 Q: Let's go back for a second to rent-to-own  
117 laws which sort of got us in that vein in your  
118 opinions regarding those laws as they might apply  
119 or have some relevance here to the telephone  
120 leasing business. Looking at your report, we've  
121 addressed paragraph 5, that being, I guess, a  
122 summary statement of your opinions regarding the  
123 rent-to-own laws?  
124 A: Yes.  
125 Q: And then looking over more specifically --  
126 I'm looking at paragraph 24; is that right?  
127 A: Twenty-four.  
128 Q: And paragraph 24 addresses that opinion as  
129 well concerning rent-to-own legislation, does it  
130 not?  
131 A: Yes.  
132 Q: You state here, AT&T structured its leasing  
133 program to avoid state rent-to-own legislation and  
134 federal consumer leasing legislation. What do you  
135 mean when you say AT&T structured its lease

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111 program, if you could explain that to me?  
112 A: AT&T carefully avoided formally offering  
113 customers the opportunity to buy the phone they  
114 were leasing, because they knew that if they did  
115 that, it would subject them to lease laws. They  
116 structured their leasing term month to month so  
117 that it would not trigger the minimum four-month  
118 lease disclosures of the Consumer Leasing Act. The  
119 company held internal meetings frequently to  
120 discuss the details of these statutory obligations  
121 and admonished their employees to make sure that  
122 they did not take actions with respect to  
123 responding to customer complaints that might in  
124 fact trigger some of these requirements.  
125 Q: So focusing on the rent-to-own laws, your  
126 opinions regarding that, when you say structured,  
127 AT&T structured its lease program to avoid those  
128 laws, you're referring to not formally offering the  
129 sale in place?  
130 A: Yes.  
131 Q: And when you talk about structuring its  
132 lease program to avoid federal consumer leasing  
133 legislation, you're talking about having a  
134 month-to-month lease term so as not to trigger  
135 obligations under the act?

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111 A: Yes.  
112 Q: Let's take rent to own first. Any other  
113 specific actions aside from not offering sale in  
114 place that you believe -- Bad question. Late in  
115 the day. Let me try it again.  
116 Is there any other action that you believe  
117 AT&T took specifically to avoid rent-to-own laws  
118 other than not offering sale in place?  
119 A: Well, that would be the key one.  
120 Q: All right. Anything else?  
121 A: I -- By doing those things, it avoided  
122 making many disclosures that it would otherwise  
123 have to be made. But those two things we just  
124 mentioned, the rent to own and the right to buy,  
125 and the term of the lease, and the consumer leasing  
126 law were the predicates that allowed them then to  
127 avoid making many disclosures that would otherwise  
128 have to be made.  
129 Q: I just want to go back so we have a clean  
130 record on exactly what you're basing that on. You  
131 say that AT&T structured the leasing program to  
132 avoid rent-to-own laws, and you told me the way  
133 they structured it was to not formally offer sale  
134 in place, correct?  
135 A: Yes.

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[1] Q: Any other activity, any other specific  
[2] action other than not offering sale in place that  
[3] you base the rent-to-own conclusion on?  
[4] A: I can't think of anything offhand right at  
[5] this moment, no.  
[6] Q: And if I understand with regard to your  
[7] statement that AT&T structured the lease program to  
[8] avoid consumer leasing legislation, you point  
[9] specifically to them having a month-to-month lease  
[10] term so as to escape the reach of the -- of the  
[11] legislation and, therefore, the lease disclosure  
[12] requirements?  
[13] A: Yes.  
[14] Q: Is there any other specific action or  
[15] inaction by AT&T other than the monthly term that  
[16] you rely upon there?  
[17] A: I can't think of anything else right now,  
[18] no.  
[19] Q: Do you know if the leasing of embedded-base  
[20] equipment was ever offered as anything other than a  
[21] month-to-month lease from, let's say, 1984 on?  
[22] A: As a generic approach, I think that was the  
[23] typical approach. I believe actually there were  
[24] jurisdictions in which there was alternative ways  
[25] to obtain telephones from the local phone company,

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[1] and I do not claim familiarity with all of them.  
[2] But there were other business models out there  
[3] floating around.  
[4] Q: Would it be fair to say that by far the  
[5] predominant lease term for embedded-base customers  
[6] starting in 1984 and the one on which you're basing  
[7] your opinions here was a monthly lease term?  
[8] A: When it started in '84 and '85, it was  
[9] monthly with this option to purchase. When it --  
[10] Then when we went to 1986, it continued monthly,  
[11] and then it was reflected on quarterly customer  
[12] bills.  
[13] Q: Quarterly billing, but was a month-to-month  
[14] lease eventually with the sale in place option no  
[15] longer being available?  
[16] A: That's right.  
[17] Q: Do you know if telephone equipment leases  
[18] were month to month before 1984 when telephone  
[19] equipment was leased by the local telephone  
[20] companies?  
[21] A: Those transactions were tariffed, and I  
[22] would hesitate to call them leases.  
[23] Q: You wouldn't call them leases?  
[24] A: Right.  
[25] Q: Was the term on which the equipment was

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[1] provided, whether you called it lease, tariffed or  
[2] something else, on a month-to-month basis, if you  
[3] know?  
[4] A: I have not analyzed that and do not recall  
[5] myself seeing any information about that, and so I  
[6] would have to say that I am not absolutely sure.  
[7] But it was tariffed, and that makes all the  
[8] difference in the world.  
[9] Q: Do you know if there was any regulatory  
[10] input or oversight or approval of the lease term on  
[11] a monthly basis; that is, there being a monthly  
[12] lease term either before '84 by the state  
[13] organizations or after '84 on behalf of the FCC?  
[14] A: I can't say offhand that I am aware of any  
[15] communications of that nature.  
[16] Q: When you mentioned the lease offer being a  
[17] lease with option to buy that equipment, the  
[18] sale-in-place option, you're referring to that  
[19] option that began in 1984 and was required by the  
[20] FCC to be offered for at least two years?  
[21] A: Yes.  
[22] Q: When was the first rent-to-own law enacted  
[23] in any state, if you know?  
[24] A: I don't.  
[25] Q: You mentioned in your report the experience

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[1] with the Maine statute.  
[2] A: Yes.  
[3] Q: When was that enacted?  
[4] A: Early '90s.  
[5] Q: I believe actually your report on the  
[6] paragraph here -- it might be back in the  
[7] summary -- says 1991. Would whatever it states in  
[8] the report be the accurate date?  
[9] A: That's my -- Yes. I looked it up.  
[10] Q: Okay. With regard to the Maine action,  
[11] what specific conduct did AT&T take to structure  
[12] the lease to avoid that law?  
[13] A: By 1991 I don't think AT&T took any  
[14] specific action to avoid that law. The pattern had  
[15] been set long before then.  
[16] Q: So it was continuation of the lease offer  
[17] that had begun by AT&T in 1984?  
[18] A: Well, I would prefer to trigger it with the  
[19] lease offer with no option to buy that occurred  
[20] sometime in '86 or '87, but --  
[21] Q: Well, focusing on rent to own, I believe  
[22] you told me that that relates to ending the  
[23] sale-in-place offer, right?  
[24] A: Right. But as we discussed earlier, while  
[25] formally required to be ended at the end of '85, I



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[1] believe that in fact informally it was continued by  
[2] AT&T for some period of time after that.  
[3] Q: Did AT&T to your knowledge ever represent  
[4] to any customers, any embedded-base customers, that  
[5] their lease payments would be applied toward the  
[6] purchase of the embedded-base phones?  
[7] A: As a disclosure to customers in anything  
[8] preprinted sense, no, that disclosure was not made  
[9] to them.  
[10] Q: Whether a disclosure in the preprinted  
[11] sense or in any sense, do you know if AT&T ever  
[12] communicated to embedded-base lease customers that  
[13] their lease payments would apply toward purchase of  
[14] the phone?  
[15] A: When people called up to complain and  
[16] pushed really hard, customer service reps in fact  
[17] allowed people to keep the phone without any extra  
[18] charge.  
[19] Q: And that's what you've referenced as part  
[20] of the complaint handling?  
[21] A: Yes.  
[22] Q: Apart from complaint handling, general  
[23] communications to the base of embedded-base  
[24] customers, bill insert, other sort of  
[25] communications to that customer base, are you aware

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[1] of any representation by AT&T that lease payments  
[2] would apply toward purchase of the phones?  
[3] A: No.  
[4] Q: Any marketing materials on that basis that  
[5] you ever saw?  
[6] A: No.  
[7] Q: Do you believe that embedded-base customers  
[8] should have been given their phones, given  
[9] ownership of those phones, at the end of 1985?  
[10] A: You mean if I had ruled the world, how  
[11] would I have handled this transition? I mean,  
[12] there was no basis for claiming that AT&T was  
[13] required to do that. If I had had the right to do  
[14] this transition based on what we know now, how  
[15] would I have done it? Is that what you want?  
[16] Q: Let's take that. What's your opinion on  
[17] that?  
[18] A: AT&T would never have been given these  
[19] customers. They would have remained as default  
[20] lease customers with the local phone company with  
[21] prices regulated by the states, and AT&T would have  
[22] been fully competitive in its leasing or sale  
[23] business and able to attract as many customers as  
[24] anyone else out in the market for leasing or sale;  
[25] and the entity who was providing the telephone set

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[1] to the customer would not have any competitive  
[2] interest in who got these customers or whether they  
[3] remained with the local phone company or not.  
[4] Q: So if you had the choice to make, that's  
[5] how you would have structured --  
[6] A: Yes.  
[7] Q: -- the trans-- I won't call it  
[8] transaction.  
[9] A: Transition.  
[10] Q: Transition, whatever occurred in regard to  
[11] the lease base?  
[12] A: Right.  
[13] Q: Now, apart from your view on that, do you  
[14] believe that AT&T was obligated or is obligated  
[15] under the law in any basis to have given the phones  
[16] to customers at the end of 1985? Bad question.  
[17] Let me try again.  
[18] Do you have an opinion as to whether AT&T  
[19] was legally obligated to turn over ownership of the  
[20] equipment at the end of 1985 to embedded-base  
[21] customers?  
[22] A: Well, we know they weren't legally  
[23] obligated. The FCC order clearly contemplated that  
[24] not all customers would have left to purchase a  
[25] phone or would have purchased the phone. So there

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[1] was a contemplation that there would be some group  
[2] of customers that would remain with AT&T and  
[3] subject to leasing by AT&T.  
[4] Q: Do you believe it was an unlawful or  
[5] unconscionable practice for AT&T to continue to  
[6] offer those telephones on a lease basis and to  
[7] charge for them on a monthly basis or quarterly  
[8] basis after 1985?  
[9] A: Well, I've described all the practices that  
[10] I think were unconscionable that occurred after  
[11] that time period, and that's here in my report.  
[12] Q: So it would be fair to say that you have  
[13] not reached an opinion or conclusion that it was  
[14] unconscionable, unfair, or misleading for AT&T to  
[15] continue offering those phones for lease and  
[16] charging for them after 1985?  
[17] MR. MARKER: Can you be specific? You mean  
[18] at the prices at which AT&T actually offered the  
[19] phones for lease after 1985?  
[20] Q: Well, let's say starting January 1, 1986.  
[21] MR. MARKER: That --  
[22] A: I evaluated what AT&T did.  
[23] MR. MARKER: Barbara, Barbara, Barbara.  
[24] I'm addressing a different ambiguity in your  
[25] question.



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11 Q: Let me just do a different question. What  
12 I'm trying to determine is whether you have any  
13 opinion as to whether it was unconscionable,  
14 unfair, whatever terminology you want to use, for  
15 AT&T to continue providing those phones on the  
16 lease basis and charging for them on a lease basis  
17 after the end of the transition period after 1985.  
18 MR. MARKER: I object to the vagueness in  
19 one respect, and I'm not sure if you intend this or  
20 not. Do you mean to continue charging for the  
21 phones, charging for the phones to be leased after  
22 1985 at the prices that were actually charged or at  
23 any prices? I don't think your question is  
24 specific about that.  
25 Q: Let me clarify. We'll go around and make  
26 sure that we get a clear answer. Do you have an  
27 opinion whether it was unlawful, unfair,  
28 unconscionable, whatever terms you might choose,  
29 for AT&T to continue offering embedded-base  
30 products for lease and to charge for those at any  
31 rate after 1986 -- I'm sorry -- 1985?  
32 A: I'm sorry. I'm hesitating because I'm  
33 still not exactly sure what you're asking. I  
34 reviewed things that did happen and made a  
35 statement and opinion about those things that did

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11 happen. Are you now trying to construct a  
12 hypothetical action that AT&T did or didn't take  
13 and ask me to comment on that?  
14 Q: No. No, I'm not.  
15 A: Okay.  
16 Q: Let's take the rates --  
17 A: Okay.  
18 Q: -- at the beginning of 1986, before there  
19 was a rate increase --  
20 A: Okay.  
21 Q: -- since we know that happened. So January  
22 1 of 1986. Do you believe it was unfair,  
23 misleading, or unconscionable for AT&T to continue  
24 offering the equipment on a lease basis in January  
25 of '96 at the then existing rates?  
26 MR. MARKER: I think you meant to say  
27 January of '86, didn't you?  
28 MS. BAKEWELL: Did I say '96.  
29 MR. MARKER: Yeah. That's fine. I object.  
30 As propounded I think that's a compound question.  
31 I think you should've broke it up if it's unfair  
32 and misleading on one hand or whether it's  
33 unconscionable on the other. Because then she said  
34 she uses unconscionable to refer to pricing and  
35 unfair and misleading generally to other practices.

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11 Q: (By Ms. Bakewell) If that's what we need  
12 to do, that's fine. Just to move it along, you  
13 probably could answer it both together. Do you  
14 think it was unconscionable for AT&T to offer  
15 embedded-base equipment on a lease basis and to  
16 charge for it starting in January 1986 at the then  
17 existing rates?  
18 MR. MARKER: That question, I think, she's  
19 asked and answered. It has been asked and  
20 answered.  
21 A: I have asked -- It was asked, and it was  
22 answered this morning. And at that point AT&T had  
23 an obligation to in fact provide the leasing  
24 service to the embedded-base customers at the low  
25 rates that had been mandated for that transition  
26 period. That was what they were faced with in  
27 January 1986, because that was what they had  
28 proposed they would do; and that plan had been  
29 approved.  
30 Q: Is it your understanding that AT&T had an  
31 obligation to continue providing the lease service,  
32 the lease offering, after 1985?  
33 A: They were not regulated by the FCC in any  
34 way with respect to how long they would continue  
35 doing this, what price they would charge, how they

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11 would communicate with their customers about this  
12 program. That was all subject to AT&T's discretion  
13 as I understand it. But they had an obligation at  
14 some point -- at the exact point, not at some  
15 point, at the exact point of January 1, 1986. They  
16 had a bunch of leasing customers. What they did  
17 with them after that was AT&T's obligation and  
18 decision and not the FCC's.  
19 Q: And do you have an opinion on whether AT&T  
20 could have simply stopped offering phones on a  
21 lease basis as of January 1986?  
22 A: And given the phones to customers? We  
23 wouldn't be here if they had done that.  
24 Q: Well, that's not my question.  
25 A: I'm sorry.  
26 Q: Whether they were obligated to continue  
27 offering phones on a lease basis as of January '86  
28 forward, do you have an opinion about that?  
29 A: I do not understand any of the FCC orders  
30 to control the length of time over which AT&T would  
31 continue its lease business to people who failed to  
32 make choices in the transition period.  
33 Q: Focusing on the Consumer Lease Act and/or  
34 the consumer leasing legislation that you mentioned  
35 in your opinions, do you believe it's unfair for a

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(1) business to offer a lease service of less than four  
(2) months?  
(3) A: For certain products, of course not.  
(4) Q: Do you believe that was unfair here?  
(5) A: Yes.  
(6) Q: Why?  
(7) A: Because of the nature of the product and  
(8) the way in which these customers became customers.  
(9) Q: Do you believe that either the state  
(10) regulatory bodies before '84 or the FCC as of 1984  
(11) should have required at least a four-month lease  
(12) term?  
(13) A: Well, that's interesting because who would  
(14) have had jurisdiction to require it if anyone had  
(15) thought that was the way to proceed? I mean,  
(16) there's no evidence that any regulatory agency  
(17) formally considered what to do with these  
(18) transactions or to regulate them. Certainly the  
(19) FCC assumed that it did not any longer have  
(20) authority with regard to these transactions.  
(21) Q: Let's focus on the period of time in my  
(22) question.  
(23) A: Okay.  
(24) Q: 1983 and before. So any time before 1984.  
(25) A: I'm sorry?

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(1) Q: Do you have an opinion as to whether the  
(2) state regulatory bodies should have required a  
(3) lease term of at least four months when they had  
(4) authority over the offering of leased equipment?  
(5) A: I reject the notion of describing the  
(6) pre-'93 (sic) acquisition of telephone sets as  
(7) leasing. It was a tariffed offering with terms and  
(8) conditions fully regulated by state PUC's. It's  
(9) not a commercial/consumer lease.  
(10) Q: You wouldn't characterize it as a lease?  
(11) A: No.  
(12) Q: However you would characterize it, do you  
(13) believe the state regulatory bodies, the PUCs,  
(14) should have required that offering be of at least a  
(15) four-month term?  
(16) A: No.  
(17) Q: What about when the FCC entered its orders  
(18) with regard to the lease business late 1983 and  
(19) thereafter, do you believe the FCC should have  
(20) required at least four months' term?  
(21) A: Well, more importantly I think what they  
(22) should have done and what AT&T should have  
(23) subsequently done has to do with the disclosures to  
(24) the customer, not the term of the lease.  
(25) Q: My question is different. My question's on

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(1) the term of the lease. Do you have an opinion as  
(2) to whether the FCC should have required at least a  
(3) four-month term?  
(4) A: No, I don't have an opinion about that.  
(5) MR. MARKER: Should we take our final break  
(6) any time?  
(7) MS. BAKEWELL: Sure. Now is a good time  
(8) for me.  
(9) MR. ARMSTRONG: Before you go off the  
(10) record, I've given you, Ketrina, the four invoices  
(11) from Barbara Alexander that we pulled out of our  
(12) accounting file, and I gave Lou a copy as well  
(13) before he left.  
(14) MS. BAKEWELL: I believe you or someone  
(15) passed those to me right at the conclusion of the  
(16) last break.  
(17) MR. ARMSTRONG: Okay. Thanks.  
(18) (Off the record.)  
(19) Q: (By Ms. Bakewell) Ms. Alexander, before  
(20) the break we had talked about your opinions with  
(21) regard to rent-to-own laws and consumer leasing  
(22) legislation. I want to go back to the consumer  
(23) leasing legislation matter for just a moment. In  
(24) your report, you sometimes say the Consumer Leasing  
(25) Act, and I assume there you're talking about the

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(1) federal act; is that correct?  
(2) A: I think that's probably correct. I  
(3) certainly mean the federal act. Many states have  
(4) versions of it themselves as well.  
(5) Q: Okay. Your opinions with regard to  
(6) consumer leasing legislation, because you use that  
(7) term as well, do you intend that to include both  
(8) the federal act and state legislation?  
(9) A: Yes.  
(10) Q: Is it your position that AT&T or Lucent  
(11) should have provided to embedded-base lease  
(12) customers the types of disclosures that are  
(13) dictated by consumer leasing legislation or the  
(14) Consumer Leasing Act?  
(15) A: Yes.  
(16) Q: Do you have an opinion as to whether AT&T  
(17) had any duty to do so?  
(18) A: Not because there was a law on the books  
(19) that said you had to do it, but because the company  
(20) had a relationship with this particular group of  
(21) customers who had come to them by default; and the  
(22) policies underlying those laws were the sorts of  
(23) policies that has formed my determination that the  
(24) failure to give proper disclosures similar to those  
(25) of the Consumer Leasing Act was unfair and

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[1] deceptive of the company, all the way through this  
[2] process.  
[3] Q: So if I understand, then, you're not taking  
[4] the position that AT&T or Lucent's leasing business  
[5] was directly subject to the Consumer Leasing Act or  
[6] to consumer leasing legislation?  
[7] A: I am not making a conclusion about the  
[8] applicability of those laws in a legal  
[9] conclusionary sense. I am talking about the  
[10] motivations that led to those laws and the consumer  
[11] protection impetus behind those laws are the same  
[12] as the motivations that should have resulted in  
[13] disclosures in this case.  
[14] Q: So if I understand, your opinion is not  
[15] that those laws applied directly or controlled the  
[16] leasing business, but by reason of the nature of  
[17] the transition and how AT&T came to have  
[18] embedded-base customers, it should have  
[19] nevertheless done the kind of disclosures and  
[20] things required under those laws?  
[21] A: Yes.  
[22] Q: You list in your opinion a number of  
[23] disclosures that, had the lease term been four  
[24] months or more, you believe AT&T been obligated to  
[25] give to lease customers. Do you recall that

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[1] portion of your report?  
[2] A: Well, let's find it.  
[3] Q: Sure. I'm looking at paragraph 24.  
[4] A: I'm looking at paragraph 6.  
[5] Q: Okay. Well, let's look at paragraph 6. I  
[6] believe paragraph 24 also addresses this particular  
[7] opinion, does it not?  
[8] A: Yes, it does as well.  
[9] Q: Well, let's focus back on paragraph 6,  
[10] since that's where you were looking, and you say in  
[11] the second sentence, As a result AT&T's consumers  
[12] were never informed of the term of the lease, the  
[13] value of the product being leased, or the value of  
[14] the product at the end of the lease. Are those the  
[15] disclosures that you believe AT&T should have  
[16] given?  
[17] A: Well, they did inform them of the term of  
[18] the lease month to month. The list here are those  
[19] that would have been provided in a coordinated,  
[20] conspicuous way at the entry into the transaction  
[21] had it been treated as a regulated lease.  
[22] Q: And when you say --  
[23] A: And I think that the more detailed list is  
[24] the one I gave on 24. Don't forget six is the kind  
[25] of summary, overall approach, and 24 is the more

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[1] specific.  
[2] Q: That's why I had started with 24. But  
[3] whether you look at --  
[4] A: I see.  
[5] Q: Whether you look at paragraph 6 or  
[6] paragraph 24, you identify disclosures that you  
[7] believe AT&T would have been required to give had  
[8] the embedded-base leases been subject to the  
[9] consumer leasing legislation --  
[10] A: Yeah.  
[11] Q: -- is that fair?  
[12] A: Yeah.  
[13] Q: Have you made any determination of how the  
[14] erosion rates or any of the other reflections of  
[15] consumer activity, customer activity, would have  
[16] changed had those disclosures been made?  
[17] A: I cannot provide you with a specific  
[18] number, but we know that the motivation for states  
[19] and the federal government enacting these  
[20] disclosures is that adverse impacts on customers  
[21] will result without these disclosures. And so the  
[22] assumption by policymakers is that people will be  
[23] adversely affected by entering into transactions  
[24] without these disclosures or comparable  
[25] disclosures.

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[1] Q: And in this instance, it was the FCC that  
[2] oversaw the entry into the transactions for  
[3] embedded-base customers starting in January '84; is  
[4] that correct?  
[5] A: They issued an order that provided certain  
[6] requirements on AT&T with regard to the need to  
[7] inform customers, but I do not view that order in  
[8] any way as comprehensive or intending to make a  
[9] statement about you only need to do this and no  
[10] more and you're safe if you don't want to do any  
[11] more.  
[12] Q: And I'm not focusing on any disclosure or  
[13] information that might have been addressed in that  
[14] order. I understand you take issue with some of  
[15] that. I'm simply focusing on the transaction, to  
[16] use your words, or the situation whereby  
[17] embedded-base customers on January -- on December  
[18] '83 become AT&T lease customers in January '84.  
[19] That transaction or transition was governed by the  
[20] FCC, was it not?  
[21] A: Yes.  
[22] Q: Are you able to quantify for me how many  
[23] lease customers would have terminated or cancelled  
[24] had the disclosures of the kind you outline in  
[25] paragraph 6 and 24 been provided?



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111 A: No. I would have no way providing you with  
112 a specific number.  
113 Q: I want to go back for just a second and ask  
114 you about your conclusions about pricing. And we  
115 talked about this earlier in your conclusion; that  
116 prices became exorbitant and thereby unconscionable  
117 in 1986, whenever the rate increase occurred.  
118 A: Yes.  
119 Q: Fair statement?  
120 A: Yes.  
121 Q: Would it make any difference to that  
122 opinion if you knew that certain of the 1986  
123 prices, the increased prices, were in fact less  
124 than the charges being assessed for leased  
125 equipment prior to '84?  
126 MR. MARKER: May I hear that question  
127 again, please.  
128 (The requested portion of the  
129 record read by the reporter.)  
130 A: I would want to know what equipment and the  
131 extent of the differential before indicating that  
132 it would make a difference.  
133 Q: Let me give you an example. I'll ask the  
134 question that way. Let's take a traditional rotary  
135 desk phone. If you know that certain of the rates

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111 for that phone before '84 when it was in a  
112 regulated environment were less -- I'm sorry --  
113 were in fact more than the increased rate charged  
114 for that same item in 1986 by AT&T, would that make  
115 any difference to your opinion?  
116 A: No. Because the rates that were charged by  
117 the states for telephone sets were widely regarded  
118 as not based on the cost of leasing the phone or  
119 the phone itself, but had to do with the rate  
120 design and the contribution of this product to the  
121 rates for local basic phone service. I am sure the  
122 rates for phones did vary. I don't know the exact  
123 differential among the states, but it did vary.  
124 But the pricing methodology was totally  
125 without relationship to a uniformly understood  
126 notion of the value of the particular telephone set  
127 in question. There are other things going on with  
128 that regulatory approach, and so what the  
129 customer's bill said was less important for that  
130 line item than the bottom line, which was what was  
131 the customer paying for local phone service.  
132 Q: So for you it would not make difference in  
133 your opinion if a customer was paying less for  
134 rotary phone set in middle of 1986 than he was at  
135 the end of 1983?

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111 A: So you're positing a situation in which the  
112 customer was paying more than 2.25 in the middle of  
113 1983, was then paying a dollar 50 a month for the  
114 two-year period '84 and '85, and was increased to  
115 2.25, which is, I believe, the price increase that  
116 did occur in the middle of 1986; is that what  
117 you're suggesting occurred?  
118 Q: Take the prices in '84 and '85 and '86.  
119 I'm focusing on if the price was less at the rate  
120 increase in '83 than what they were paying prior to  
121 1984. Does that make any difference in your  
122 opinion?  
123 A: I don't know if it makes any difference. I  
124 would have to know the facts of the situation in  
125 order to give you an opinion.  
126 Q: You mentioned in your earlier answer that  
127 the state charges were not based on the cost of  
128 leasing phones. There were other issues having to  
129 do with other services and perhaps factors that the  
130 state PUCs would consider. Do you know the basis  
131 on which AT&T's lease charges were determined?  
132 MR. MARKER: At what time?  
133 Q: Let's take 1986, for example, first rate  
134 increase. Do you know the various factors  
135 considered in deciding to raise rates and at what

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111 level?  
112 A: It was my understanding that the company  
113 routinely beginning in mid-1986 priced its lease  
114 charges on the theory of what the market would  
115 bear.  
116 Q: So it would be your understanding that the  
117 rate was increased to the maximum the market would  
118 bear?  
119 A: Not necessarily always the maximum. But  
120 with an eye to the fact that they knew from their  
121 own studies that it was not based on the increased  
122 cost of providing services, but more in the nature  
123 of what it would take to keep the lease business  
124 profitable in an era of declining embedded base.  
125 Q: Do you know if there were any factors in  
126 the 1986 rate increase or any of the other rate  
127 increases other than that that influenced whether  
128 to raise rates and by how much?  
129 A: Well, I certainly read a lot of the  
130 repricing studies. I read the training materials  
131 that they gave to their customer service  
132 representatives to explain to customers about why  
133 this service was being increased in price, and the  
134 company told itself frequently in a variety of  
135 these materials that it was not based on increased

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(1) prices associating with repairs, for example. It  
(2) was based on increasing operating income and  
(3) surveys that tried to find out what it is that  
(4) customers would pay before being triggered to drop  
(5) the lease.  
(6) Q: Okay. I'm just trying to determine what  
(7) factors you're aware of, and you've told me that  
(8) those that you're aware of that influenced whether  
(9) to raise rates and by how much were how much the  
(10) market would bear, increasing operating revenues,  
(11) not based on costs you've stated. Are there any  
(12) other factors that went into the decision to raise  
(13) rates and by how much that you're aware of?  
(14) A: I'm reviewing my chart. Well, I'm looking  
(15) at the lease SBU business plan 1986, DCR 2667970,  
(16) in which they decided that they would emphasize the  
(17) noneconomic advantages of leasing and price the  
(18) product at the highest upper bound tested in an  
(19) effort to increase revenue.  
(20) Q: And I'm not asking for you to identify for  
(21) me the bases for those factors you've already  
(22) stated. I'm asking if there are any other factors  
(23) that went into the decision to reprice and by how  
(24) much that you're aware of.  
(25) A: Maximizing profitability and using the

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(1) highest price that the market would tolerate  
(2) without increasing erosion was the main factor  
(3) involved in my opinion.  
(4) Q: You're not aware as you sit here today of  
(5) other factors that went into that decision, if any?  
(6) A: I would presume that the company looked at  
(7) its cost structure in addition to these other  
(8) matters.  
(9) Q: I'm not asking that you presume.  
(10) A: Right.  
(11) Q: I'm asking the basis for your statement,  
(12) and so I just want to make sure I understand all of  
(13) the factors that you're aware of that went into the  
(14) pricing determinations.  
(15) A: I reviewed many documents that discussed  
(16) the basis for repricing. The quotes I'm giving you  
(17) were the company's own determinations as to the  
(18) main factor, and that is what I have focused on. I  
(19) am not going to claim there were not other factors,  
(20) but the company's own determination was that that  
(21) was the key overriding factor in picking the level  
(22) of price increase that they would put into effect.  
(23) Q: That's your conclusion based on looking at  
(24) documents produced in the case?  
(25) A: Yes.

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(1) Q: Is there any basis -- Well, strike that.  
(2) Do you believe any reasonable person could lease an  
(3) embedded-base telephone today?  
(4) A: Sure.  
(5) Q: In what situation?  
(6) A: A short-term need, a desire to try a  
(7) high-end product before deciding to buy one.  
(8) Q: Maybe I didn't make myself clear. I'm  
(9) talking about an embedded-base phone.  
(10) A: Oh, I'm sorry.  
(11) Q: Let me just rephrase it.  
(12) A: I'm sorry.  
(13) Q: Do you believe that a reasonable person in  
(14) today's world, 2001, could make the decision to  
(15) lease an embedded-base telephone?  
(16) A: You mean one of these Big Six telephones  
(17) that aren't made anymore?  
(18) Q: Sure.  
(19) A: Well, again, my -- Whether or not it is  
(20) actually possible to rent any of those phones  
(21) today, I'm not even sure. But let's assume it is.  
(22) For some short-term need, I certainly wouldn't  
(23) suggest that option should not be available if  
(24) someone chose to enter into it.  
(25) Q: And when you say short-term need, would

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(1) there be a point in time after which you would  
(2) believe that should no longer be -- it becomes  
(3) unreasonable for that person?  
(4) A: It would be if there were no disclosures to  
(5) the customer that provided them with information  
(6) about the product that they were leasing at the  
(7) terms and conditions, the monthly rate, and they  
(8) affirmatively entered into that for some period of  
(9) time. The law would not prohibit that, and I would  
(10) not suggest it.  
(11) Q: Do you believe any reasonable person today  
(12) could make the decision to lease an embedded-base  
(13) telephone, one of the Big Six, for anything other  
(14) than the short term, short period?  
(15) A: I don't think most customers would today  
(16) consider doing that for a lengthy period of time,  
(17) of the time we're talking about in this case, which  
(18) is from 1984 to who knows when, today.  
(19) Q: That's not my question.  
(20) A: Right.  
(21) Q: My question is whether you believe any  
(22) reasonable person today could make the decision to  
(23) lease an embedded-base phone for anything longer  
(24) than the short period of time?  
(25) A: Could they do it? Yes, they could do it.

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111 Q: And they would be a reasonable person --  
112 They would be a reasonable person to make that  
113 decision?  
114 A: You asked me if a reasonable person could  
115 do it. Are you now asking me if it would be  
116 reasonable for this person to do it?  
117 Q: No, no.  
118 A: Yes, they could do it.  
119 Q: And if they did it, do you think that would  
120 be unreasonable for them?  
121 A: Depending on the length of the transaction,  
122 I could easily -- Not easily. I could certainly  
123 suggest that at some point that becomes uneconomic  
124 and one that I would not recommend.  
125 Q: All right. Would there be a point in time  
126 when you believe that becomes unreasonable for any  
127 person?  
128 A: And we're starting out with a customer who  
129 has positively entered into this transaction?  
130 Q: Sure. Someone who knows what they're doing  
131 and decided --  
132 A: Right.  
133 Q: -- to lease the phone.  
134 A: Right. And they've had the kinds of  
135 disclosures that I have recommended should have

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111 been provided from the beginning, and they make a  
112 decision to lease for a lengthy period of time. I  
113 do not suggest that that kind of transaction be  
114 prohibited under the law, nor would I suggest that  
115 there has necessarily, based on the facts we've  
116 just described, been anything done wrong.  
117 Q: So you couldn't say as you sit here today  
118 that no reasonable person could possibly lease an  
119 embedded-base phone in 2001?  
120 A: I'm sorry. What are you asking me again?  
121 Q: Just simply that you're not able to say as  
122 you sit there today that it would be impossible for  
123 any reasonable person to lease an embedded-base  
124 phone -- to make the decision to lease an  
125 embedded-base phone in 2001?  
126 A: It would not be impossible for a person to  
127 conclude that that would be a desirable transaction  
128 under certain conditions, that's correct.  
129 Q: Let me go back and focus for just a minute  
130 on a couple of the other opinions that you address  
131 in your summary of opinions. I'm looking at  
132 paragraph 7, and you discuss there inside wire  
133 maintenance service. If I'm reading it correctly,  
134 you conclude that there's some similarities to the  
135 telephone leasing business. It's pretty generic

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111 characterization. I hope you can follow it.  
112 A: It is a generic characterization, yes.  
113 Q: So let me just ask this question: Whether  
114 you base any of your opinions upon a comparison --  
115 any of your opinions as stated in this report upon  
116 a comparison of inside wire maintenance service and  
117 telephone leasing?  
118 A: I'm sorry. I don't understand your  
119 question. I did say that I was struck by the  
120 similarities, and I then go on to describe the  
121 similarities.  
122 Q: Right. Let's start there.  
123 A: Okay.  
124 Q: How do you relate the inside wire  
125 maintenance service to your conclusions about the  
126 AT&T leasing business, if you do?  
127 A: As I said here, here I state we have a  
128 relatively small monthly fee being charged for a  
129 telephone equipment lease that is relatively  
130 similar to inside wire, in that customers were  
131 confused and often did not understand the nature of  
132 the transaction or that the price of the, quote,  
133 lease benefits; unquote, were far less than the  
134 value of the lease rate that was charged for a  
135 multiyear period.

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111 Q: And those would be the similarities that  
112 you see between the two?  
113 A: Yes.  
114 Q: Are there dissimilarities or differences?  
115 A: I pointed out one significant difference in  
116 that state public utility regulators had and have  
117 authority about how local phone companies market  
118 inside wire maintenance to its customers, even if  
119 they don't have authority over the price charge for  
120 that product. And so that is a distinction of some  
121 importance with respect to AT&T's consumer leasing  
122 program.  
123 Q: You state on page 7, sort of in the middle  
124 of the page, sentence beginning unfortunately --  
125 A: Yes.  
126 Q: -- Unfortunately, unlike the situation with  
127 the inside wire maintenance, the state public  
128 utility regulators did not have jurisdiction over  
129 AT&T's rates since they were prohibited from  
130 regulating the price for long-distance service or  
131 the sale or lease of telephone equipment. Why did  
132 you say unfortunately?  
133 A: Because if they had had -- had some  
134 remaining jurisdiction, I think that there would  
135 have been more probability anyway that various



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[1] states would have opened investigations into the  
[2] consumer leasing activities of AT&T at some point  
[3] in this time period.  
[4] Q: So what you mean to convey by unfortunately  
[5] is things might have been different if state  
[6] regulation had continued over the service?  
[7] A: Yes.  
[8] Q: Do you believe that would have been  
[9] preferable?  
[10] A: I have no -- Based on my experience at the  
[11] state level and in many different states, I can  
[12] predict that there would have not been a uniform  
[13] response by the various states to that  
[14] jurisdiction, even if they had had it. But that  
[15] there may have been some investigations that would  
[16] have obtained the kind of documentation that I'm  
[17] now reviewing in this case and perhaps issued  
[18] orders that would have solved some of the problems  
[19] that we are now faced with here, some of the  
[20] defects, the lack of disclosures and so forth. I  
[21] don't know that for sure, but I feel that that is a  
[22] more likely event had the states had some authority  
[23] in the area.  
[24] Q: And so would it be fair to say that you  
[25] favor or you would have favored the continued state

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[1] regulation of telephone leasing?  
[2] A: It would have been helpful had there been  
[3] at least some sort of concurrent or remaining  
[4] jurisdiction with the states in this regard.  
[5] Q: So the answer would be yes?  
[6] A: Yes.  
[7] Q: On down in the page, you say, Furthermore,  
[8] neither state nor federal utility regulators knew  
[9] the size or scope of AT&T's consumer leasing  
[10] business and did not, in the normal course,  
[11] understand the nature of the efforts AT&T undertook  
[12] to retain leasing customers. Do you see that  
[13] statement?  
[14] A: Yes.  
[15] Q: What's your basis to say that?  
[16] A: Well, we know that the states did not have  
[17] jurisdiction and could not issue requests to AT&T  
[18] or orders, I guess I should say, to AT&T to explore  
[19] or obtain information about the nature of the  
[20] leasing business.  
[21] Q: Well, let's focus on the FCC, then.  
[22] A: Okay.  
[23] Q: What's your basis to say that federal  
[24] utility regulators -- I'm assuming you're talking  
[25] about the FCC there; is that fair?

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[1] A: That's fair.  
[2] Q: What's your basis to say that the FCC did  
[3] not know the size or scope of AT&T's consumer  
[4] leasing business or the nature of AT&T's efforts to  
[5] retain leasing customers?  
[6] MR. MARKER: My only objection is you left  
[7] out the part of the sentence that Barbara had just  
[8] quoted, which is that the FCC didn't know that in  
[9] the normal course.  
[10] Q: Fine. With that qualification, what's your  
[11] basis?  
[12] A: Because the FCC understood that this was  
[13] not subject to their general oversight in any way.  
[14] They viewed it as deregulated, detariffed, subject  
[15] to the, quote, competitive market, unquote; and  
[16] there is no evidence of any ongoing reporting,  
[17] investigation, or tracking of what was happening  
[18] with regard to AT&T's leasing to its embedded-base  
[19] customers.  
[20] Q: So the basis would be that you have not  
[21] seen any evidence that federal regulators knew  
[22] those things?  
[23] A: That's correct.  
[24] Q: Have you made any effort to communicate  
[25] with anyone at the FCC or to review any FCC files

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[1] yourself?  
[2] A: No.  
[3] Q: You're basing it upon materials provided to  
[4] you by Carr Korein?  
[5] A: I'm basing it on materials provided to Carr  
[6] Korein by AT&T and then provided to me, yes.  
[7] Q: Okay. I want to look at -- It's not in the  
[8] summary of the opinions, but it is at the back,  
[9] conclusions section. I'll give you a paragraph  
[10] number here in a second. Paragraph 38.  
[11] A: Yes.  
[12] Q: And you state there that AT&T's practices  
[13] in regard to its leasing program for pre-1984  
[14] residential customers are directly contrary to what  
[15] regulators and policymakers are ordering with  
[16] respect to the transition to electric, natural gas,  
[17] and local exchange telephone competition for  
[18] residential customers. Do you see that statement?  
[19] A: Yes.  
[20] Q: Can you explain to me, first, what you mean  
[21] when you say that AT&T's practices are contrary to  
[22] what regulators and policymakers are ordering?  
[23] A: All of the states who are undergoing the  
[24] transition for competition to these services, which  
[25] are historically regulated as utility services,

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11 have confronted the question of default service.  
12 What do you do with people who are being provided  
13 with an opportunity to enter the competitive market  
14 and leave the utility and obtain at least part of  
15 their services from competitive providers? What do  
16 you do when they don't leave? How do you ensure a  
17 transition between the people who do nothing and  
18 stay where they are to market in which ideally  
19 there are multiple competitors competing for the  
20 services of mass market residential customers and  
21 there is a free flow in and out of various  
22 providers based on price, service quality, and  
23 other terms and conditions?  
24 So my paragraph here is a description of  
25 the differences between how state regulators are  
26 treating the issue of the default provider in  
27 electric and gas competition from the regulation of  
28 AT&T who is allowed to keep these customers and do  
29 with them as they would in the post-'86 time  
30 period.  
31 Q: Is it your opinion that regulatory controls  
32 of the kind that you discuss in this paragraph as  
33 related to other utility providers should apply or  
34 should have been imposed on AT&T after 1985?  
35 A: Yes.

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1 Q: On what authority would that have been  
2 done?  
3 A: Looking back now from our hindsight  
4 position, there are a variety of entities who could  
5 have taken a role in mandating certain disclosures,  
6 pricing protections, regulatory reporting,  
7 oversight of activity, structural separation of a  
8 variety of types. The FCC could have, perhaps; the  
9 Federal Trade Commission could have taken action.  
10 The state's Attorney General could have initiated  
11 certain kinds of action that might have led to that  
12 kind of result. But the bottom line is that AT&T  
13 had the ability to take steps to ameliorate the  
14 market power and abusive nature of the relationship  
15 they were involved in, and they didn't do it either  
16 voluntarily or they were not doing it pursuant to  
17 the order of any agency.  
18 Q: The regulatory controls that you discuss in  
19 paragraph 38 for utilities entering into a  
20 competitive environment, are those controls imposed  
21 by state utility commissions?  
22 A: Yes.  
23 Q: And is it your opinion that controls by  
24 state utility commissions would have been  
25 appropriate on AT&T leasing?

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1 A: They could not. The FCC prohibited the  
2 states from doing that.  
3 Q: Okay. And I understand we've talked about  
4 the FCC actions.  
5 A: Right.  
6 Q: So I'm wondering: Is it your opinion that  
7 had things been different, should the states have  
8 done that?  
9 A: No. My only point here is that the state  
10 should have done it. I'm pointing out to what the  
11 states are doing now as examples of the types of  
12 initiatives which could have been done at either  
13 the state or the federal level in this process.  
14 Q: And for whatever reason were not done,  
15 correct?  
16 A: That's correct.  
17 Q: Do you believe that a regulated business  
18 should ever be allowed to move into a competitive  
19 environment without some continued controls by some  
20 regulatory body?  
21 MR. MARKER: Could the question be a little  
22 bit more general?  
23 A: I can answer this question by giving you  
24 examples of the kind of regulatory authority that  
25 is typically attached to the move to competition.

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1 Q: Not the -- not the question.  
2 A: Not the question, okay.  
3 Q: Not the question. What I'm wondering:  
4 Since you focused here in paragraph 38 on utilities  
5 that you're aware of, regulated businesses,  
6 utilities that are moving to a competitive  
7 environment but with continued regulatory controls,  
8 do you believe that any business that has been  
9 regulated should be permitted to move into a  
10 competitive environment without such controls?  
11 A: Generally no.  
12 Q: Are you aware of any examples in your  
13 experience where that has happened, aside from, you  
14 know, the descriptions that you've given about the  
15 AT&T lease business? Putting AT&T leasing aside,  
16 are you aware of any other instances where that has  
17 happened?  
18 A: Where what has happened?  
19 Q: Where a formerly regulated business has  
20 been allowed to move into a competitive environment  
21 without continued regulatory controls?  
22 A: Perhaps it's the hour of the day, but I am  
23 left without any immediate examples to provide you  
24 with.  
25 Q: So --

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[1] A: Do you have any you care to discuss?  
[2] Q: I'm actually just asking whether you're  
[3] aware of any examples.  
[4] A: Well, off the top of my head at this hour,  
[5] no, but that doesn't mean there aren't any.  
[6] Q: In your experience with the regulated  
[7] companies that have moved to a competitive  
[8] environment but with continued regulatory controls,  
[9] are you aware of any instances where those controls  
[10] have eventually been fully lifted?  
[11] A: I'm not aware of, from my experiences in  
[12] the public utility arena in which all the controls  
[13] either have been or ever will be entirely lifted,  
[14] but the nature of the regulatory process changes  
[15] from tariffs, to contract regulation. It's a very  
[16] different kind of regulation, and that's the  
[17] transition where we're seeing going on in the  
[18] various states in question.  
[19] Q: So the nature of the regulation might  
[20] change, but are you aware of any instance where  
[21] it's been absolutely lifted?  
[22] A: No.  
[23] Q: Do you think it ever should be?  
[24] A: Not if the same entity is providing a  
[25] regulated default service while at the same time

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[1] trying to sell a competitive service of the same  
[2] nature in the same marketplace.  
[3] Q: Let me go back for a minute to the area of  
[4] business practices that you cover in paragraph 3  
[5] and your statement that AT&T used unfair and  
[6] misleading practices. One of the examples you gave  
[7] me as we talked about various practices was AT&T's  
[8] knowledge of various consumer research showing  
[9] inertia or confusion on the part of customers. Do  
[10] you recall that example?  
[11] A: I have addressed those issues in my report,  
[12] yes.  
[13] Q: Okay. You use the term inertia throughout,  
[14] and I just want to ask what you understand that  
[15] term to mean.  
[16] A: Inertia and habit, I think, are very close,  
[17] probably mean the same thing. Inertia is more in  
[18] the nature of doing nothing and letting it keep  
[19] happening. Habit is the repetition of something  
[20] over and over again. Both descriptions, I think,  
[21] are probably accurate for the group involved in  
[22] these discussions. Those, of course, are AT&T's  
[23] words in their own documents.  
[24] Q: I'm asking your understanding. Would that  
[25] be just as you've explained it?

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[1] A: Yes.  
[2] Q: Do you understand inertia or habit to  
[3] involve -- Let me strike that. Do you believe  
[4] inertia or habit as those terms are reflected in  
[5] the documents you've reviewed and you understand  
[6] them to indicate that the customer has not made any  
[7] choice?  
[8] A: Has not made affirmative choice, yes.  
[9] Q: You understand that to be the case?  
[10] A: Yes.  
[11] Q: Do you understand those terms to mean that  
[12] the customer has no preference one way or the other  
[13] for the product or service?  
[14] A: They have been offered the opportunity to  
[15] state a preference and have not done so.  
[16] Q: My question is a little different. Whether  
[17] they stated a preference or not, articulated what  
[18] they feel or don't feel, do you have any  
[19] understanding of whether those terms, habit and  
[20] inertia as they're used in the studies and you  
[21] understand them, to mean that the customer has  
[22] no -- has made no choice? I'm sorry. Excuse me.  
[23] Do you understand those terms to mean that  
[24] the customer has no preference one way or the  
[25] other?

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[1] A: Preference for what?  
[2] Q: Preference for whatever is the product or  
[3] service, in this instance, lease.  
[4] A: These terms are used in the context as to  
[5] why people are continuing to lease from AT&T, and  
[6] the answer to that is that for a very large portion  
[7] of the base, it's habit and inertia. There's no  
[8] affirmative choice involved in that  
[9] characterization.  
[10] Q: What I'm trying to understand is whether  
[11] you believe customers who are in the inertia or  
[12] habit category are people who have no preference  
[13] one way or the other on whether to lease.  
[14] A: On whether to lease or buy?  
[15] Q: Sure, whether to lease or stop leasing;  
[16] let's put it that way.  
[17] A: I'm sorry. I'm trying to figure out the  
[18] question. These are customers who do not know why  
[19] they are leasing and continue to lease because it  
[20] is a habit in which they have engaged that nothing  
[21] has triggered them to evaluate or stop or take a  
[22] different road. Is that -- That's my understanding  
[23] of those terms.  
[24] Q: All right. So your understanding would be  
[25] people in the category of inertia or habit are



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11) people that don't know why they're leasing?  
12) A: That's right.  
13) Q: And do you have an opinion of whether those  
14) people would prefer to stop leasing if they weren't  
15) doing it out of inertia, some inertia reason, or  
16) habit?  
17) A: Well, I -- I hesitate to try and pierce the  
18) veil of what it is they were thinking or not  
19) thinking. AT&T kept trying to figure it out, what  
110) triggered people to leave the leasing arrangement.  
111) It never seemed to, you know, nail down the burning  
112) issue that got people out of the inertia or habit.  
113) But what they did know is that if they could keep  
114) them as customers, they would continue making money  
115) off of them.  
116) Q: Well, and I know that that's your opinion  
117) in the case. But what I'm trying to determine is  
118) whether you have a view on whether people who are  
119) in the inertia or habit category necessarily did  
120) not prefer leasing.  
121) A: I do not have opinion about that.  
122) Q: Have you ever considered inertia as that  
123) concept is covered in the market research you've  
124) reviewed in this case in connection with any other  
125) business or utility that you've worked with -- or

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11) work -- done work related to, I should say?  
12) A: Well, because it's so classically  
13) associated with the negative option approach to  
14) entering into this transaction, it doesn't have too  
15) many antecedents or ways that I can compare it to,  
16) the combination of the negative option and the  
17) types of disclosures that got created in the --  
18) that created the potential for a large group of  
19) people with inertia or habit as the basis for the  
110) transaction.  
111) Q: So the answer would be that you have not  
112) had past experience in working with that concept?  
113) A: Well, it comes into play with regard to the  
114) issue of default service in the competitive market  
115) transition we were talking about earlier with  
116) electric and natural gas and even local phone  
117) service.  
118) Q: Have you in that context conducted or  
119) considered any studies that address inertia or  
120) habit in customers?  
121) A: There have been a lot of surveys done, many  
122) of which I have seen sponsored by state Public  
123) Utility Commissions about customer knowledge of,  
124) awareness of, and interest in electric service  
125) competition, for example, and have discovered that

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11) a large number of people are basically satisfied  
12) with their current utility service and would need  
13) to be provided with the opportunity for a  
14) significant price differential in order to leave  
15) their local utility and pick an alternative  
16) provider.  
17) Q: Do you believe based on your experience  
18) that inertia in a customer base is necessarily a  
19) negative thing?  
110) A: It depends on what the product is involved.  
111) If the habit is to always buy a Diet Coke, then  
112) obviously from Coke's -- Coca-Cola's perspective,  
113) that's a great thing.  
114) Q: And in your view, when does inertia become  
115) a negative thing, if it does?  
116) A: When it's occurring in the context of the  
117) kinds of transactions that we have at issue in this  
118) proceeding.  
119) Q: And so here where you have a default  
120) provider as you've termed it, AT&T being assigned  
121) basic customers, inertia in that context, you  
122) believe, is not appropriate?  
123) A: Particularly when there's no oversight of  
124) the disclosures, the pricing and the communications  
125) with that group of people that was obtained in this

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11) regulatory sanctioned negative option approach.  
12) Q: Let me ask you about some of the customers  
13) addressed in some of those studies. What about  
14) customers who are content with the lease service  
15) but not interested in making a change; would those  
16) be inert customers or leasing out of habit in your  
17) opinion?  
18) A: I would defer to the AT&T categorization in  
19) those groups in its surveys.  
110) Q: What about customers who responded in such  
111) a way as to put them in the inertia and habit group  
112) but who just don't want to be bothered and are  
113) satisfied with doing what they're doing; would  
114) those be inert customers in your opinion?  
115) A: I am quoting the surveys and would defer to  
116) how the surveys categorize the responses of people  
117) in the customer base.  
118) Q: So regardless of the composition of the  
119) customers in the inertia or the habit group, would  
120) it be your opinion that AT&T acted improperly in  
121) taking advantage of that group?  
122) A: In general, yes.  
123) MR. MARKER: Ketrina, I'm willing to let  
124) you finish up if you've got a little bit more in  
125) this specific line. It's now -- I think we're

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[1] about 55 minutes into the -- ten minutes over.  
[2] MS. BAKEWELL: So ten minutes over. I'll  
[3] just indicate --  
[4] A: My gosh. It's ten of seven.  
[5] MS. BAKEWELL: I'll just indicate for the  
[6] record we've requested for additional time with  
[7] Ms. Alexander. I think it's appropriate given the  
[8] scope and breadth of her opinions and her  
[9] documents. I also think it's appropriate in light  
[10] of some of the documents not disclosed until today  
[11] and provided until today. And I understand that  
[12] Plaintiffs' counsel may disagree, but our position  
[13] would be that more time is required to adequately  
[14] cover her testimony; and with that, if you're  
[15] kicking me out, that's fine. But --  
[16] MR. MARKER: I have a couple questions I'd  
[17] like to ask. I don't believe that there's anything  
[18] that you've been provided today with the exception  
[19] of her billings statement, the invoice, that you  
[20] didn't have before, but we'll leave that for  
[21] another time. If you could give me just a minute,  
[22] I'll have a couple questions.  
[23] EXAMINATION  
[24] QUESTIONS BY MR. MARKER:  
[25] Q: Barbara, I believe you testified earlier

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[1] today that you and Ms. TerKeurst exchanged some  
[2] sort of outline, correct?  
[3] A: Yes.  
[4] Q: My question is: Was the outline in the  
[5] nature of a listing of issues to be addressed of  
[6] you -- by each of you, or was it in the nature of  
[7] detailed position statements that each of you was  
[8] going to take?  
[9] A: It definitely was not the latter. It was  
[10] more in the nature of a Roman numeral type of  
[11] outline of the kinds of issues that would be  
[12] addressed and the kinds of materials that were on a  
[13] preliminary basis determined to be relevant to  
[14] these kinds of topics.  
[15] Q: By these kinds of topics, you mean the  
[16] topics that you intended to work on in connection  
[17] with this case?  
[18] A: Yes.  
[19] Q: All right. I believe you've also testified  
[20] that you reviewed documents in this case from the  
[21] period starting in the late '80s through the year  
[22] 2000 or maybe even the present?  
[23] A: The documents that I reviewed include  
[24] materials from the 1983 period through the  
[25] transition beginning in '86 and some documents but

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[1] of a lesser volume from the '97, '98, '99, 2000  
[2] time period, yes.  
[3] Q: And you've testified to a number of either  
[4] deceptive and misleading or unconscionable  
[5] practices that those documents reflect, right?  
[6] A: Yes.  
[7] Q: Do the documents you reviewed reflect such  
[8] deceptive, misleading, or unconscionable practices  
[9] both before and after the year 1996?  
[10] A: Yes. The prices continued to be  
[11] unconscionable in my opinion and of course as --  
[12] with the passage of time become even more so in  
[13] light of the group of customers we're talking  
[14] about; that is, the pre-'86 embedded customers --  
[15] or pre-'84. Excuse me. And there was -- With one  
[16] exception which I think is important but not  
[17] definitive, there wasn't any change in AT&T,  
[18] Lucent's or the other entities' efforts to try to  
[19] retain their embedded customers, and the exception  
[20] was the itemized billing that began in 1996 and the  
[21] bill insert that went out which was the first  
[22] effort to provide some educational material to  
[23] customers about the leasing program and for the  
[24] first time in a decade mention the notion of  
[25] purchasing a telephone.

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[1] Q: When you say there wasn't any change, you  
[2] mean there wasn't any change in the Defendants'  
[3] conduct with the one exception that you've noted  
[4] before 1996 and after 1996?  
[5] A: Right.  
[6] Q: So that the deceptive practices you've  
[7] identified, to the extent they occurred either  
[8] before or after 1996, you would consider deceptive,  
[9] right?  
[10] A: Right. My review of those documents would  
[11] indicate that the general approach remained the  
[12] same, which is to retain as many customers as  
[13] possible, to attempt to save the lease upon  
[14] customer contact with the service center, and to  
[15] emphasize the lease benefits in communications with  
[16] customers.  
[17] Q: And with respect to the unconscionability  
[18] of the prices charged by AT&T, those prices in your  
[19] opinion remained -- were unconscionable before 1996  
[20] and remained unconscionable after 1996?  
[21] A: That's correct.  
[22] Q: I believe you also testified earlier that  
[23] the only specific guidance you had about the exact  
[24] number of people who would have been deceived or  
[25] the victims of unconscionable conduct on the part

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[1] of AT&T, was AT&T's own erosion studies, correct?  
[2] A: We did discuss that, yes.  
[3] Q: Okay. And those -- In terms of specific  
[4] numbers of customers affected, those erosion  
[5] studies are the best evidence you have of the  
[6] specific numbers, right?  
[7] A: They are the only evidence of the volume of  
[8] customers who either left or -- and then stayed  
[9] with the company over the time period in question,  
[10] yes.  
[11] Q: Okay. You also testified that the  
[12] underlying purpose of the consumer protection laws  
[13] or the kind of consumer protection laws which the  
[14] plaintiffs in this case were alleging were violated  
[15] is to protect consumers against certain deceptive  
[16] conduct, correct?  
[17] A: That's right.  
[18] Q: And isn't the -- Would it be fair to say,  
[19] based upon your experience in consumer affairs,  
[20] that the reason for providing such protection is  
[21] the belief that a significant number of consumers  
[22] will be deceived without such protection?  
[23] A: That's correct. The law does not presume  
[24] in almost all cases that all customers will react  
[25] in exactly the same way to the presence or the

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[1] absence of disclosures, but the underlying  
[2] principles that have guided the adoption of many of  
[3] our consumer protection disclosure laws and  
[4] regulation laws with regard to pricing of these  
[5] products is that absent these kinds of initiatives,  
[6] you know, reasonable -- many reasonable consumers  
[7] will be misled and have adverse results as a  
[8] result.  
[9] Q: And based upon your expertise as a consumer  
[10] affairs specialist, is it your opinion that many  
[11] consumers were in fact deceived by the practices  
[12] you've identified in your report in this case?  
[13] A: The actions AT&T undertook in this case are  
[14] exactly the kinds of actions that historically have  
[15] been found to be followed by deception and adverse  
[16] action and impacts on customers, and I believe  
[17] that's in fact what's happened here.  
[18] Q: And when you say on customers, you mean on  
[19] significant numbers of customers?  
[20] A: That's right.  
[21] MR. MARKER: I think that's all I have.  
[22] Let me caucus here for a second.  
[23] (Off the record.)  
[24] That's all I have.  
[25] MS. BAKEWELL: Are you going to allow me to

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[1] ask a clarification on one of the questions you  
[2] just asked?  
[3] MR. MARKER: Sure.  
[4] MR. MARKER: Let me do this. I can make it  
[5] my exhibit, too. I guess we can mark this as an  
[6] exhibit.  
[7] (Plaintiffs' Exhibit Alexander 1  
[8] marked for identification.)  
[9] Barbara, I'm going to show you what's been  
[10] marked as Plaintiffs' Exhibit 1, exhibit to your  
[11] deposition.  
[12] A: These are invoices, one, two, three, four  
[13] that I have submitted to the attorneys in this  
[14] case.  
[15] Q: (By Mr. Marker) Okay. Do the invoices  
[16] show the -- as of what -- Through what date are the  
[17] invoices?  
[18] A: They run from June 10th through time spent  
[19] on this case of 10/25.  
[20] Q: All right. So from the beginning of your  
[21] involvement through the 25th of October, this would  
[22] be a complete statement of the hours that you've  
[23] spent on the case?  
[24] A: Yes.  
[25] Q: And they're the charges that you've billed

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[1] us?  
[2] A: That's correct.  
[3] Q: And at the rate at which you've billed us?  
[4] A: Yes.  
[5] MR. MARKER: Okay. I don't have anything  
[6] else.  
[7] EXAMINATION  
[8] QUESTIONS BY MS. BAKEWELL:  
[9] Q: I just have -- I have more than just these  
[10] couple of follow-ups to your questions as I noted  
[11] on the record, and believe that not only am I  
[12] entitled to more time, but it's appropriate here  
[13] and required. I'll just note also that Exhibit  
[14] No. 1 that Ms. Alexander just identified, the  
[15] invoices, was given to me later this afternoon, and  
[16] I have not had an opportunity to examine those.  
[17] Plus I believe there are additional documents which  
[18] we can take up that might be at issue, for example,  
[19] the proposal that you identified before and  
[20] possibly some of the cover correspondence from  
[21] Mr. Armstrong.  
[22] Be that as it may, is Exhibit No. 1 a  
[23] complete set of the invoices that you've tendered  
[24] to Carr Korein in this matter, Ms. Alexander?  
[25] A: The only possibility is that I had



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[1] submitted one after the 25th of October, and I'm  
[2] not -- No, that's not likely. Today's November  
[3] 8th. No, it is unlikely that I have submitted one  
[4] since then. So yes, I believe they are complete,  
[5] yes.  
[6] Q: All right. You testified a moment ago in  
[7] answer to one of Mr. Marker's questions that when  
[8] AT&T sent out the bill insert, I guess  
[9] informational pieces you've described it, in 1996,  
[10] this was the first time in a decade that AT&T had  
[11] mentioned purchasing a telephone. Do you recall  
[12] that statement?  
[13] A: To this group of customers as an option to  
[14] leasing, yes.  
[15] Q: All right. So the first time in a decade  
[16] that they had mentioned purchasing a telephone to  
[17] embedded-bases customers?  
[18] A: As an option to leasing.  
[19] Q: And when you say purchase a telephone, are  
[20] you referring to sale-in-place option or purchase  
[21] any telephone?  
[22] A: Obviously AT&T issued bill inserts  
[23] advertising for sale certain kinds of telephone  
[24] products, but they were not products equivalent to  
[25] embedded-base telephones; and that's the

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[1] distinction I'd like to draw here.  
[2] Q: I know that's your opinion. But I'm just  
[3] asking you only about the statement you made.  
[4] A: Right.  
[5] Q: When you said first time in a decade that  
[6] they mentioned purchasing a telephone --  
[7] A: Uh-huh.  
[8] Q: -- are you talking about there a mention of  
[9] purchasing any telephone, or was that reference in  
[10] the bill insert to only sale-in-place phones?  
[11] A: I did not mean it --  
[12] Q: Let me ask it this way.  
[13] A: I'm not understanding the use of your term  
[14] sale-in-place terms.  
[15] Q: Let me go back and just ask the question a  
[16] different way. Do you understand the reference in  
[17] that insert to purchasing a phone pertain to  
[18] purchasing any telephone and not simply one that  
[19] might be in a customer's home?  
[20] A: It was presented as a purchase of any phone  
[21] as an option to leasing, and that's the conjunction  
[22] that had been missing in all the other  
[23] communications in the last decade.  
[24] Q: This raises a whole new line of  
[25] questioning. All right. The insert you're talking

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[1] about when you said first time in a decade it  
[2] mentioned purchasing a telephone wasn't limited to  
[3] purchasing a phone that was being leased but to any  
[4] telephone?  
[5] A: I just answered.  
[6] Q: So is that correct?  
[7] A: I'll stand by the answer I gave you the  
[8] first time to your question, I guess.  
[9] Q: Well, the reason I ask you is earlier in  
[10] your testimony, you had indicated to me that your  
[11] focus was on sale-in-place offerings of telephones  
[12] as opposed to telephones out in the marketplace  
[13] generally. What I'm trying to determine here is  
[14] whether you had any understanding of whether that  
[15] bill insert communicated to customers that they had  
[16] the option to buy telephone equipment generally or  
[17] if it was focused on buying the telephones in their  
[18] homes.  
[19] A: The 1996 bill insert was not limited to  
[20] purchasing the telephone that they had been  
[21] leasing, because that was technically no longer an  
[22] option. It was a discussion of the option of  
[23] leasing or purchasing which is the key point here  
[24] that had never been discussed in that way with the  
[25] customers in the last ten years.

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[1] MS. BAKEWELL: Okay.  
[2] MR. MARKER: We're done.  
[3] MR. ARMSTRONG: Reserve signature.  
[4] THE WITNESS: Oh, yes. Am I supposed to ask  
[5] that, or do you ask that?  
[6] MR. ARMSTRONG: It's done.  
[7]  
[8] (Original Defendants' Exhibits  
[9] Alexander 1 through 6, along with  
[10] Original Plaintiffs' Exhibit  
[11] Alexander 1, retained by  
[12] Ms. Bakewell.)  
[13]  
[14] SIGNATURE RESERVED, BY AGREEMENT OF COUNSEL AND  
[15] WITNESS  
[16]  
[17]  
[18]  
[19]  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]

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[1] WITNESS SIGNATURE PAGE  
[2]  
[3] COMES NOW THE WITNESS, BARBARA  
[4] ALEXANDER, and having read the foregoing transcript  
[5] of the deposition taken on the 8th day of November,  
[6] 2001, acknowledges by signature hereto that it is a  
[7] true and accurate transcript of the testimony given  
[8] on the date herein above mentioned.  
[9]  
[10] \_\_\_\_\_  
[11] BARBARA ALEXANDER  
[12]  
[13] Subscribed and sworn to me before this \_\_\_\_ day  
[14] of \_\_\_\_\_, 2001. My Commission  
[15] expires: \_\_\_\_\_  
[16]  
[17]  
[18] \_\_\_\_\_  
[19] Notary Public  
[20]  
[21]  
[22]  
[23]  
[24]  
[25]

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[1] correctly set forth the testimony of the  
[2] aforementioned witness, together with the questions  
[3] propounded by counsel and remarks and objections of  
[4] counsel thereto, and is in all respects a full,  
[5] true, correct and complete transcript of the  
[6] questions propounded to and the answers given by  
[7] said witness; that signature of the deponent was  
[8] not waived by agreement of counsel.  
[9] I further certify that I am not of  
[10] counsel or attorney for either of the parties to  
[11] said suit, not related to nor interested in any of  
[12] the parties or their attorneys.  
[13] Witness my hand and notarial seal at  
[14] St. Louis, Missouri, this 17th day of November,  
[15] 2001.  
[16] My Commission expires September 2, 2004.  
[17]  
[18] \_\_\_\_\_  
[19] Notary Public in and for the  
[20] State of Missouri  
[21]  
[22]  
[23]  
[24]  
[25]

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[1] STATE OF MISSOURI  
[2] SS.  
[3] CITY OF ST. LOUIS  
[4] I, Pamela Watson Harrison, a Notary  
[5] Public in and for the State of Missouri, duly  
[6] commissioned, qualified and authorized to  
[7] administer oaths and to certify to depositions, do  
[8] hereby certify that pursuant to Notice in the civil  
[9] cause now pending and undetermined in the Circuit  
[10] Court of the Third Judicial Circuit, Madison  
[11] County, Illinois, to be used in the trial of said  
[12] cause in said court, I was attended at the offices  
[13] of Carr, Korein, Tillery, Kunin, Montroy, Cates,  
[14] Katz & Glass, 701 Market Street, Suite 300, in the  
[15] City of St. Louis, State of Missouri, by the  
[16] aforesaid witness; and by the aforesaid attorneys;  
[17] on the 8th day of November, 2001.  
[18] That the said witness, being of sound  
[19] mind and being by me first carefully examined and  
[20] duly cautioned and sworn to testify the truth, the  
[21] whole truth, and nothing but the truth in the case  
[22] aforesaid, thereupon testified as is shown in the  
[23] foregoing transcript, said testimony being by me  
[24] reported in shorthand and caused to be transcribed  
[25] into typewriting, and that the foregoing pages